

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6114

BPLS

In The

United States Court of Appeals

For The Second Circuit

FRIENDSHIP DAIRIES, INC., POLLIO DAIRY
PRODUCTS CORP., CROWLEY FOODS, INC.,
QUEENSBORO FARM PRODUCTS INC., SARATOGA
DAIRY, INC., DELTOWN FOODS, INC., ELMHURST
MILK AND CREAM CO., INC., QUEENS FARMS, INC.,
and CUBA CHEESE AND TRADING CO., INC.,

Plaintiffs-Appellants,

-against-

EARL BUTZ, Secretary of the Department of Agriculture of the
United States,

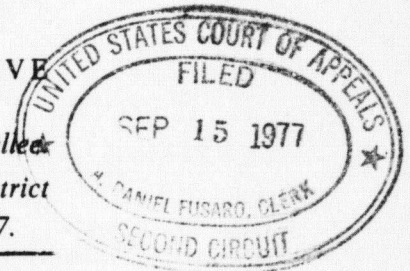
Defendant-Appellee,

-and-

PENNMARVA DAIRYMEN'S COOPERATIVE
FEDERATION, INC.,

Intervenor-Appellee

*From an Order and Judgment of the United States District
Court for the Eastern District of New York in 75c 1517.*



JOINT APPENDIX

Volume I, pp. 1a - 290a

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DISTRICT COURT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS	
9/13/75		Complaint filed . Summons issued.	(1)
9/16/75		Summons ret'd and filed . Executed.	(2)
11/11/75		ANSWER filed.	(3)
11-24-75		Notice of motion ret 12-5-75 for an order pursuant to Rule 24 for leave to intervene as a deft in this action filed. (mg)	(4)
11-24-75		Memorandum in support of motion to intervene filed. (mg)	(5)
11-24-75		Intervenor's answer filed. (mg)	(6)
12/3/75		Affidavit in Opposition to Pennmarva's Motion to Intervene filed.	(7)
12/3/75		Pltff's Memorandum in Opposition to Motion to Intervene of Pennmarva Dairymen's Cooperative Federation, Inc. filed.	(8)
12-5-75		Before NEAHER, J. - Case called. Motion of Pennmarva Dairymen's Cooperative to intervene as defts argued. Decision reserved.	
12-24-75		By NEAHER, J. - Memorandum and Order dtd 12-24-75 granting motion of Pennmarva Dairymen's Cooperative Federation, Inc. to intervene filed. (copies mailed to attys).	(9)
8-26-76		Notice of change of address filed.	(10)
8-27-76		Notice of motion xxx for summary judgment filed.	(11)
9-30-76		Defts motion for summary judgment filed.	(12)
9-30-76		Intervenor's mmo of law in support of motion for summary judgment filed.	(13)
10-15-76		Reply memo of law of pltffs in support of motion for summary judgment filed.	(14)
12-14-76		Deft's response to pltffs' reply memo filed.	(15)
5/19/77		By Neaheer, J Order dtd 5/18/77 filed re pltff's motion for summary judgment is denied and deft's motion for summary judgment dismissing the complaint on the merits is granted. jlj	(16)
5/20/77		Judgment dtd 5/20/77 filed re that the pltff take nothing of the deft and that the pltff's motion for summary judgment is denied. The deft's motion for summary judgment is granted and the complaint is dismissed on the merits. jlj	(17)
7-15-77		Notice of appeal for the pltffs filed. Copy to Cof A and US Atty.	(18)
7-15-77		Undertaking for costs on appeal attached to document #18. mg	
8-1-77		Letter from David C. Toomey dtd 7-26-77 re designation of exhibits for appeals filed. mm	(19)
8/8/77		Letter from David Toomey dated 8/1/77 filed	(20)
8/8/77		Record on appeal certified and mailed to court of appeals	XXXX

A TRUE COPY	
ATTEST	
DATED	8/8 1977
LEWIS ORCEL	
CLERK	
BY	DEPU. CLERK

DOCUMENTS FROM THE RULE-MAKING HEARING (IN ADMINISTRATIVE
RECORD)

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE
MARKETING AGREEMENTS AND ORDERS (pp. 2a-8a)

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

[7 CFR PARTS 1001, 1002, 1004, 1015, 1033, 1036, 1040, 1049]

Docket Nos. AO-14-A53, etc.

MILK IN THE BOSTON REGIONAL AND CERTAIN OTHER MARKETING AREAS

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO
TENTATIVE MARKETING AGREEMENTS AND ORDERS

<u>7 CFR PART</u>	<u>MARKETING AREA</u>	<u>DOCKET NO.</u>
1001	Boston Regional	AO-14-A53
1002	New York-New Jersey	AO-71-A68
1004	Middle Atlantic	AO-160-A51
1015	Connecticut	AO-305-A31
1033	Ohio Valley	AO-166-A44
1036	Eastern Ohio-Western Pennsylvania	AO-179-A39
1040	Southern Michigan	AO-225-A28
1049	Indiana	AO-319-A22

Notice is hereby given of a public hearing to be held at the U. S. Department of Agriculture (South Building, Jefferson Auditorium) 14th and Independence Avenue, Washington, D. C., beginning at 9:30 a.m., local time, on February 20, 1974, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the aforesaid specified marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

(39 F.R. 5642, 2-14-74)

Hearing Clerk

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to all proposals.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by National Farmers Organization:

Proposal No. 1 - Re 7 CFR Parts 1001, 1002, 1004

In §§ 1001.61(b), 1002.50a(c), and 1004.50(b), delete the language preceding the table therein and replace with the following:

"Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month;"

Proposal No. 2 - Re 7 CFR Parts 1033, 1036, 1040

In §§ 1033.51(c), 1036.50(c), and 1040.50(c), delete the language presently therein and replace with the following:

"(c) The Class III price shall be the basic formula price for the month."

Proposal No. 3 - Re 7 CFR Part 1049

Amend § 1049.50(b) by deleting the language presently therein and replacing with the following:

"(b) The Class II price shall be the basic formula price computed pursuant to § 1049.51."

Proposed by Pennmarva Dairymen's Cooperative Federation, Inc.:

Proposal No. 4 - Re 7 CFR Parts 1001, 1002, 1004, 1015

Delete all of the words of §§ 1001.61(b), 1002.50a(c), 1004.50(b), and 1015.61(b), except the following:

"The Class II price shall be the basic formula price for the month."

Proposed by Eastern Milk Producers Cooperative Association, Inc.:

Proposal No. 5 - Re 7 CFR Parts 1001, 1002, 1004, 1015, 1036

Eliminate the alternative butter-powder formula provisions of §§ 1001.61(b), 1002.50a(c), 1004.50(b), 1015.61(b), and 1036.50(c) in all months except April, May, and June.

Proposed by New York-New England Dairy Cooperative Coordinating Committee:

Proposal No. 6 - Re 7 CFR Parts 1001, 1002, 1004, 1015, 1036

Change the method of determining the Class II price (Class III price under Order 36) to a simple average of the Minnesota-Wisconsin and butter-powder values as now calculated under Orders 1, 2, 4, 15, and 36 (instead of the lower of the two prices or values) except that for milk going into butter or nonfat dry milk the butter-powder value shall be used if it is lower than the Minnesota-Wisconsin price.

Proposed by Michigan Milk Producers Association, McDonald Cooperative Dairy Company, Constantine Cooperative Creamery Company, Michigan Producers Dairy Company, and Independent Cooperative Milk Producers Association:

Proposal No. 7 - Re 7 CFR Part 1040

1. Divide the present Class III classification into two classes as follows:

Class III -- all present Class III utilization except butter and nonfat dry milk solids

Class IIIA-- milk used to produce butter and nonfat dry milk solids

2. Class prices. Class III price to be the simple arithmetical average of the Minnesota-Wisconsin series price for the current month and the present butter-powder formula price for the current month, but no lower than the butter-powder formula price for the current month.

Class IIIA price shall be the present butter-powder formula price for the current month.

3. Excess price. The excess price will be the lowest class price.

Proposed by Central Valley Milk, Inc.:

Proposal No. 8 - Re 7 CFR Part 1033.51(c)

Amend. § 1033.51(c) to read as follows:

§ 1033.51 Class prices.

* * * * *

(c) Class III price. The Class III-price shall be the basic formula price, except that the price of butterfat and skim milk used to produce butter and nonfat dry milk shall be an amount computed as follows:

(1) Multiply the Chicago butter price by 4.2;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the results arrived at under subparagraphs (1) and (2) of this paragraph, subtract 48 cents, and round to the nearest cent.

Proposal No. 9

Take evidence with respect to the need to issue a decision on the proposed amendments on an emergency basis.

Proposed by Associated Milk Producers, Inc.:

Proposal No. 10 - Re 7 CFR Part 1049

Amend § 1049.50(b) to read:

(b) Class II milk price. The Class II milk price shall be the basic formula price computed pursuant to § 1049.51.

Proposed by Idlenot Farm Dairy, Inc.:

Proposal No. 11 - Re 7 CFR Part 1001

Remove the butter-powder formula price provision of § 1001.61(b).

Proposed by Fiorlat Dairy Products Corporation, Friendship Dairies, Inc., and Pollio Dairy Products Corporation:

Proposal No. 12 - Re 7 CFR Part 1002

Amend § 1002.50a(c)(3) by changing "48 cents" stated therein to "65 cents" or to any other figure not to exceed 65 cents.

Proposed by H. P. Hood, Inc.:

Proposal No. 13 - Re 7 CFR Parts 1001, 1002, 1004, 1015

Amend §§ 1001.61(b)(3), 1002.50a(c)(3), 1004.50(b)(3), and 1015.61(b)(3) by substituting "72 cents" for "48 cents."

Proposal No. 14 - Re 7 CFR Parts 1001, 1002, 1004, 1015

Should the Class II price formula be amended so as to treat the price of Class II milk for the manufacture of butter and nonfat dry milk differently than other Class II products, it is proposed that dry whole milk, storage cream, and frozen desserts be placed in the same category as nonfat dry milk and butter.

Proposed by Central Ohio Cooperative Milk Producers, Milk, Inc., Wayne Cooperative Milk Producers:

Proposal No. 15 - Re 7 CFR Part 1036

Amend the preamble of § 1036.50(c) to read as follows:

"(c) Class III price. The Class III price for all skim milk and butterfat used to produce (1) any Class III product as defined in § 1036.40(c), except butter and nonfat dry milk shall be the basic formula price for the month, and (2) butter and nonfat dry milk shall be an amount computed as follows:"

Proposed by Miami Valley Milk Producers, Milk, Inc., Wayne Cooperative Milk Producers:

Proposal No. 16 - Re 7 CFR Part 1049

Amend § 1049.50(b) to read as follows:

"(b) Class II price. The Class II price shall be the basic formula price computed pursuant to § 1049.51, except that the price for skim milk and butterfat used to produce nonfat dry milk and butter shall be computed as provided in § 1049.50(b)(1), (2), and (3).

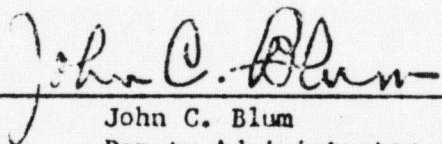
Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 17

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid specified marketing areas or from the Hearing Clerk, Room 112-A, Administration Building, United States Department of Agriculture, Washington, D. C. 20250, or may be there inspected.

Signed at Washington, D. C., on: February 12, 1974



John C. Blum
Deputy Administrator
Regulatory Programs

1 probably have asked all of their questions.

2 JUDGE McALPIN: I will ask again. Are there any
3 further questions?

4 MR. PALMER: We will ask that Mr. Plumb be excused.

5 JUDGE McALPIN: Thank you, Mr. Plumb. Before we
6 begin the testimony on the proposals, let's take a ten-minute
7 recess.

8 (Whereupon, a short recess was taken).

9 JUDGE McALPIN: Gentlemen, will you come to order and
10 be seated please? We are ready at this point to proceed
11 with evidence pertaining to the proposals. And we will hear
12 now from the proponents of Proposals 1, 2 and 3, National
13 Farmers Organization.

14 Mr. Cochran?

15 MR. COCHRAN: Yes, sir.

16 Whereupon,

17 DONALD BERKHAHN

18 having been duly sworn by the Administrative Law Judge was
19 called as a witness herein, and was examined and testified
20 as follows:

21 DIRECT EXAMINATION

22 BY MR. COCHRAN:

23 Q Mr. Berkhahn, will you give your full name and
24 mailing address?

25 A My name is Donald Berkhahn, B-E-R-K-H-A-H-N. I

1 reside at Northgate Drive, Corning, Iowa, 50841.

2 Q I believe you are employed by National Farmers
3 Organization of Corning, Iowa?

4 A I am, by the Dairy Commodity Department.

5 Q What is the address of the National Farmers Organi-
6 zation?

7 A Seven twenty Davis Avenue, Corning, Iowa.

8 Q That is the headquarters of the organization?

9 A It is.

10 Q The notice of hearing shows that National Farmers
11 Organization is the proponent of Proposals No. 1, No. 2 and No.
12 3. Do you have some testimony that you desire to give now on
13 behalf of National Farmers Organization with respect to those
14 three proposals?

15 A I have.

16 Q Will you proceed?

17 A The National Farmers Organization represents dairy
18 farmers whose milk production is marketed in 15 milk markets
19 that are regulated by Federal Milk Market Orders. These dairy
20 farmers are "producers" as defined in the respective order.

21 In its representation of these producers, National
22 Farmers Organization is recognized by the Secretary of Agricul-
23 ture as a qualified cooperative association as defined in the
24 respective orders.

25 The major objective of National Farmers Organization

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1 is to obtain for its members prices for their products that
2 appropriately reflect cost of production plus a reasonable
3 profit, consistent with the economic conditions at the time.
4 It is also our objecti - to gain for our dairy farmers access
5 to and their share of the federally regulated fluid or Class 1
6 milk market.

7 In this connection, it is our objective to provide
8 to our customers the best service available. National Farmers
9 Organization is, of course, extremely interested that its
10 members be provided in the respective federal orders ample and
11 full prices according to the wording of the Act.

12 This price should be arrived at with due regard to
13 the cost of items involved in production. Also, due regard
14 should be given to an assured price that will provide to pro-
15 ducers the incentive to continue in milk production, without
16 decrease in production.

17 This assurance should be provided on a continuous
18 basis in order to eliminate uncertainty among producers and
19 handlers on the long term. As we understand the provision in
20 Section 608 (c)(18) of the Act, the Secretary is to establish
21 milk prices that are reasonable in view of the price of feeds,
22 the available supplies of feeds, and other economic conditions
23 which affect market supply and demand for milk and its products
24 in the marketing area, that will assure adequate supplies of
25 milk and be in the public interest.

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1 The NFO is the proponent of Proposals No. 1, No. 2 and
2 No. 3 appearing in the Notice of Hearing. These proposals
3 deal with Orders 1001, 1002, 1004, 1033, 1036, 1040 and 1049.
4 For some time, NFO has been seeking a remedy through revision
5 of the Order provisions to accomplish the results that will
6 follow the adoption of said proposals.

7 In January, NFO submitted petitions requesting
8 suspension action in Order 1001, 1002, 1004, 1033, 1036, 1040
9 and 1049, which would have the effect of eliminating the
10 further use of the butter-powder formula as a pricing mechanism
11 for Class 2 or Class 3 milk in said respective orders.

12 The language of Order 1069 does not lend itself to
13 the suspension procedure that would result in the elimination
14 of the butter-powder formula as a Class 2 pricing mechanism
15 and the use of the Minnesota-Wisconsin Series Price, or the
16 basic formula price, as the Class 2 price.

17 Therefore, NFO petitioned for an immediate final
18 decision on Order 1069 under Dockets AO-153-A19, et al,
19 which would result in the use of basic formula price, Minne-
20 sota-Wisconsin Series, for the Class 2 milk specified in that
21 decision.

22 Not having received notice of favorable action on
23 said Petitions for Suspensions, and for the issuance of such
24 final decision for Order 1069, under date of February 4, 1974,
25 NFO submitted the proposals that appear in the Notice of

13a

1 Hearing, plus a proposal to amend Order 1069. This proposal
2 on Order 1069 was not published in this Notice of Hearing.

3 After the proposals were made, NFO received formal
4 notice on February 6th from the office of some of the market
5 administrators with respect to a contemplated amendment hearing
6 on the subject of the use of the butter-powder formula as a
7 pricing mechanism in the orders.

8 After receipt of said notice, NFO communicated to
9 the Administrator, Agricultural Marketing Service, its request
10 that the proposals theretofore submitted for amendment of the
11 Orders be considered as response by NFO to said notice of the
12 contemplated hearing.

13 It is the opinion and judgment of National Farmers
14 Organization that the revision of said orders as the result
15 of this hearing should be accomplished in the most expeditious
16 manner possible.

17 Obviously, the most expeditious route with respect
18 to Orders 1001, 1002, 1004, 1033, 1040, 1035 and 1049 is the
19 suspension method. Such revisions of said orders in these
20 respects can be accomplished by the suspension of language in
21 said orders as respecting said suspension petitions.

22 With respect to Order 1069, as we have discussed
23 above, this will have to be accomplished by the amendment of
24 the order, rather than by suspension. The proposal for the
25 amendment of Order 1069, not having been published in the Notice

14a

1 of Hearing, we urgently request that such revision of
2 Order 1069 be accomplished on the basis of the immediate issu-
3 ance of the final decision in Dockets AO-153-A19, et al, where-
4 by the price to apply to the Class II in said decision in Order
5 1069 would be specified as "the basic formula price for the
6 month".

7 For the purpose of effecting such elimination of
8 the butter-powder formulas as a pricing factor in said Orders
9 other than Order 1069, through the suspension procedure, NFO
10 is submitting in exhibit form the suspension action to be
11 taken, should the Secretary find that suspension action is the
12 most expeditious method of accomplishing the elimination of
13 the butter-powder formula as a pricing mechanism in said Orders
14 as a result of this hearing.

15 Q Mr. Berkhahn, you have referred to an exhibit. Do
16 you have a copy of that document before you?

17 A I have.

18 Q Does that document consist of three typewritten
19 pages?

20 A Yes, it does.

21 Q Is it "Suspension Action Proposed by NFO for the
22 Elimination of the Butter-Powder Formula as a Pricing Mechanism
23 in Orders 1001, 1002, 1004, 1033, 1036, 1040 and 1049?

24 A It does.

25 Q Was this document prepared under your direction?

1 and supervision?

2 A. Yes, it was.

3 MR. COCHRAN: Judge, I hand you 12 copies of the
4 matter we have been discussing as to the exhibit, and ask
5 that it be marked for identification.

6 JUDGE McALPIN: Let the record show that the said
7 document is marked for identification as Exhibit X-3.

8 (The item referred to was marked
9 for identification as Exhibit X-8).

10 BY MR. COCHRAN:

11 Q Referring, Mr. Berkhahn, to the document that is
12 marked Exhibit X-8, is that document broken down in divisions
13 which are headed Order 1001, and so forth?

14 A Yes, it is.

15 Q This material, with respect to each of these orders
16 specifies the type of suspension or the suspension action in
17 these orders which you are requesting for the purpose of elim-
18 inating the butter-powder formula as a pricing mechanism?

19 A That is correct.

20 MR. COCHRAN: Judge, do you want us to go ahead?
21 I have two or three more exhibits, and take cross-examination
22 of the exhibits after he gets in all of his direct?

23 JUDGE McALPIN: Possibly it will save some time if
24 you move for their admission in evidence when you close with the
25 witness, and then it can be ---

16a

1 MR. COCHRAN: Yes, that would be my choice.

2 JUDGE McALPIN: All right, sir.

3 BY MR. COCHRAN:

4 Q Will you proceed?

5 A At the emergency hearing held in Clayton, Missouri
6 this past summer, testimony was presented by numerous produ-
7 cers representatives and producers about the need to increase
8 the milk price because of the emergency that existed.

9 Considerable testimony was also presented about
10 the need to establish some type of floor under the Minnesota-
11 Wisconsin Series Price. This proposed floor received wide-
12 spread support.

13 Since the time of that hearing we have seen a con-
14 siderable increase in the Minnesota-Wisconsin Series Price
15 and with it a corresponding increase in the Class 1 prices of
16 milk all over the United States.

17 This has of course resulted in increased blend prices
18 in federal orders. The result being that producers have re-
19 ceived the increases sought by them and their organizations
20 at the hearings in Clayton.

21 We believe it behooves all of us here representing
22 various segments of the dairy industry to re-evaluate what
23 the current situation is on the farm in the area under discus-
24 sion at this hearing, and how do prices in this area affect
25 other segments of the country.

1 We will not burden the record by entering statistics
2 relating to actual cost of production figures from the various
3 dairy areas. The facts are however that while gross dairy
4 income rose about ten percent in 1973, prices paid by dairy
5 farmers for production items were up 20 percent from a year
6 ago.

7 The milk feed price ratio is the lowest it has been
8 since 1965, and is reflected in lower production per cow,
9 the first such drop in milk output per cow since back in
10 the 1940's and a contrast to the three percent normal upward
11 trend in recent years.

12 Rural newspapers continue to devote considerable
13 space to dairy dispersal sales, and unless every possible
14 effort is made to maintain and increase the income of dairy
15 producers, serious reductions in future milk supplies will
16 result.

17 All of these factors, coupled with the importation
18 of large quantities of dairy products have left dairy produ-
19 cers with a very insecure attitude as to their future in the
20 dairy business. Many dairy producers that NFD has talked to
21 recently have either liquidated or are thinking about liquid-
22 ating their dairy herds because of this insecurity.

23 Favorable slaughter cow prices have enabled dairy
24 producers to liquidate their herds and reduce their indebt-
25 edness with the opportunity to start back into production with

18a

1 their young stock in the future if it is profitable for them
2 do so.

3 We would like to enter another exhibit into the
4 record.

5 Q The exhibit you refer to, is that composed of three
6 pages?

7 A Yes, it is.

8 Q And it is entitled, quote, "Losses in Number of
9 Producers in Pounds of Production during the 12-month Period
10 From October, November and December, 1972 to October, November
11 and December, 1973"?

12 A That is correct.

13 Q Was this document prepared under your direction and
14 supervision?

15 A It was.

16 MR. COCHRAN: Judge, I hand you 12 copies of the
17 document that has been referred to as an exhibit, and ask that
18 it be marked for identification.

19 JUDGE McALPIN: Let the record show that said docu-
20 ment is marked for identification as X-9.

21 (The item referred to was marked
22 for identification as Exhibit
23 X-9).

24 BY MR. COCHRAN:

25 Q Mr. Berkahn, on the second page of this exhibit,

1 the second and third pages are broken down into sub-headings,
2 involving each one of these orders that you are discussing;
3 is that correct?

4 A It is.

5 Q Referring to the second page, under Order 1001,
6 you have date October, 1972, 7,120 producers. You have across
7 from October, 1973 6,757 producers. Are those producer num-
8 bers that you show there, were they taken from official publi-
9 cations of the market administrator of Order 1001?

10 A Yes, they were.

11 Q When you go over to the third column, under the
12 heading "Change", does that indicate that between October,
13 1972 and October, 1973 there was a decrease in producer num-
14 bers of 3637

15 A Yes, it does.

16 Q Under "Production", in that same part, you show
17 October, 1972, 282 million pounds and October, 1973 260 million
18 pounds. Then over in the column under "Change" you show 22
19 million. Does that indicate that comparing October, 1973 and
20 October 1972 the milk in the Order 1001 pool producer milk had
21 decreased 22 million pounds?

22 A That is correct.

23 Q Does that same explanation hold with respect to the
24 other figures appearing on Page 2 and Page 3 of the matter
25 marked Exhibit 9?

20a

1 A Yes, it does.

2 Q Going to the first page of the document, Exhibit 9,
3 except for the last column under "Total" where the other
4 figures on that sheet, the typewritten figures, were they
5 taken from the information on the last two pages?

6 A Yes, they were.

7 Q Then what does the 52 million pounds, the first
8 figure under the column "Total", what does that indicate?

9 A It would indicate that during the period October,
10 November and December of 1973 there were 52 million pounds of
11 milk, 52 million pounds less milk produced in Order No. 1
12 than there was in the parallel three months in 1972.

13 Meaning a 52 million pound reduction in production
14 from '72 to '73.

15 Q You have listed in the first column seven orders as
16 indicated. Does this explanation that you have made with
17 respect to the material relating to Federal Order 1 apply with
18 respect to the material you have given on this sheet, with
19 respect to the other orders?

20 A Yes, it does.

21 Q Now the typewritten figure at the bottom of the
22 column showing the total, does that give a total of the de-
23 crease in production experienced as you have explained it for
24 all of these seven orders?

25 A Yes, for that particular month.

1 Q I notice that at the bottom of Page 1 there is
2 some handwritten material. Have all of the copies given to
3 the Examiner for Exhibit purposes, have they been conformed
4 by the addition of this handwritten material?

5 A Yes, they have.

6 Q Explain what the handwritten material shows.

7 A It indicates that from a period of October, 1972
8 until December, '73 there was a total reduction of 379 produ-
9 cers on Federal Order No. 1, and 1,854 producers in Federal
10 Order No. 2, and so forth, with the total loss during that
11 period of time in the orders under consideration of 4,575
12 producers.

13 Q Will you proceed with your testimony?

14 A I would like to point out that this pattern of de-
15 cline which has persisted in 1973 is continuing in 1974
16 with production in January 1974, three percent less than in
17 January, 1973. In most Federal Orders, the Minnesota-Wiscon-
18 sin Series Price also determines the value of Class 2 or in some
19 cases Class 3 milk, but in 18 orders, of which the orders under
20 consideration at this hearing are included, the price of Class 2
21 or Class 3 milk as the case may be is determined by the
22 Minnesota-Wisconsin Series Price or a butter-powder snubber
23 formula whichever is lower.

24 Historically this formula has worked quite well,
25 since except for a few occasions the butter-powder price, I

1 am referring here to the price of milk converted into butter
2 and powder and the cheese price, and again the price of milk
3 converted into cheese, from which the Minnesota-Wisconsin
4 Series price is basically derived, has been in relative balance.

5 This balance was maintained through most of 1973.
6 However, during the first three weeks of October of 1973, the
7 price of butter declined a total of 16 cents per pound. This
8 drastic decline in the price of butter has caused the price
9 of milk utilized for Class 2 or Class 3 purposes to be reduced
10 considerably because of the order provision which establishes
11 this price based on a butter-powder formula rather than the
12 Minnesota-Wisconsin Series Price.

13 This drop in the price of butter resulted in a drop
14 in the price of milk, manufactured into butter, of nearly
15 70 per cwt. The price of butter has continued to decline and
16 since the first of October has dropped 23 cents per pound or
17 equal to 98 cents per cwt. of milk.

18 While some of this drop has been offset by an
19 increase in the price of powder, the price of Class 2 or Class
20 3 milk determined by the butter powder formula in these orders
21 continues to be well over one dollar per cwt. lower than the
22 Minnesota-Wisconsin Series Price.

23 This has resulted in a significant drop in the blend
24 price in these orders at a time when dairy producers are ex-
25 perienceing even further increases in their cost of production.

1 And unless price relief is given, as a result of this
2 hearing, producers will be forced to discontinue production at
3 a time when milk production is declining rapidly thus further
4 jeopardizing future milk supplies for this nation.

5 At this time we would like to enter another exhibit
6 illustrating the effect this has had on producer prices.

7 Q You have referred to an exhibit. Does that consist
8 of two pages?

9 A Yes, it does.

10 Q Is the first page of that document "Estimated Fed-
11 eral Order Blend Prices Using Snubber and Minnesota-Wisconsin
12 Series Formulas and Differences Between the Blend Prices "?

13 A Yes, it does.

14 MR. COCHRAN: Judge, we hand you 12 copies of that
15 document and ask that it be marked for identification.

16 JUDGE McALPIN: Let the record show that said docu-
17 ment is marked for identification as Exhibit X-10.

18 (The item referred to was marked
19 for identification as Exhibit
20 X-10).

21 BY MR. COCHRAN:

22 Q Mr. Berkhahn, I believe you have some explanation
23 of this exhibit in your prepared statement?

24 A Yes, I do.

25 Q And you may want to add to that explanation; is that

24a

1 correct?

2 A This exhibit illustrates the actual blend prices
3 in the orders in question, as well as what the blend prices
4 would have been had the Minnesota-Wisconsin Series Price been
5 used to determine the Class 2 and Class 3 price.

6 The exhibit also illustrates the estimated losses of
7 all producers involved in federal orders where snubber formu-
8 las were used versus the Minnesota-Wisconsin Series Price
9 for establishing lowest class prices and thus lowering their
10 blend price.

11 These figures are for the months of October through
12 December, 1973.

13 Q In examining the first page of this exhibit, I be-
14 lieve that the information given with respect to Order 1,
15 some of the typewritten figures have been replaced by hand-
16 written figures; is that correct?

17 A Yes, they have.

18 Q Now this material was prepared under your direction
19 and supervision?

20 A It was.

21 Q Have all of the copies that we have given the Judge
22 to mark, do they bear the corrections showing the handwritten
23 numbers that you have made on the exhibit copy before you?

24 A Yes, they have.

25 Q I might elaborate on this. The 8.98 figure opposite

1 the M-W, under Order 1, that is the correct figure. Does that
2 mean eight dollars and ninety-eight cents?

3 A Yes.

4 Q And the amount of zero point nine in the fourth
5 column. That is the correct figure with respect to the differ-
6 ence between the snubber value or the butter-powder formula
7 and the Minnesota-Wisconsin Series?

8 A That illustrates the difference between what the
9 blend actually was and what it would have been had the Minne-
10 sota-Wisconsin Series price been used to determine lowest
11 class price.

12 Q Under Order 1, is the eight dollar and ninety-eight
13 cent figure, is that the blend price that was yielded by
14 Federal Order No. 1 with the butter-powder price being an
15 effective price determinant?

16 A That's correct.

17 Q Then the \$8.98 shows that if the Minnesota-Wisconsin
18 Series Price had been the determining factor, the blend price
19 would have been \$8.98 or nine cents higher?

20 A That is correct.

21 Q And you have given this type information for orders
22 1, 2, 4, 33, 36 and 40 for the months of October, 1973,
23 November, 1973 and December, 1973?

24 A Yes.

25 Q In other words, with respect to Order 1, the fact

1 that the butter-powder formula price has been the determining
2 price instead of the Minnesota-Wisconsin Series Price is the
3 result of the circumstance that the blend price of Order 1
4 is 38 cents per cwt. lower?

5 A That is correct.

6 Q In fact, the difference between the use of the
7 butter-powder formula and the Minnesota-Wisconsin Series Price
8 has reduced the hundredweight price for producers. That has
9 been reduced 38 cents by the action of the butter-powder for-
10 mula.

11 A Yes. In the month of December, 1973.

12 Q Then the same difference with respect to Order No. 2
13 for the month of December was a 47 cents per hundredweight
14 reduction in the real price; is that correct?

15 A That's right.

16 Q The same figure for Federal Order No. 4, was a 54
17 cent per hundredweight reduction?

18 A That's correct.

19 Q For Order 33, the corresponding reduction is 23 cents
20 per hundredweight?

21 A That's right.

22 Q For Order 36, the corresponding reduction is 29 cents
23 per hundredweight?

24 A Yes, sir.
25

27a

1 Q For Order 40, the corresponding reduction is 46
2 cents per hundredweight?

3 A That is correct.

4 Q Now, on the second sheet on the matter marked Exhi-
5 bit 10, does that equate the reduction in blend price per
6 hundredweight to dollars lost in income to dairy farmers for
7 their milk?

8 A That is correct.

9 Q In other words, federal Order No. 1 on the circum-
10 stances that the butter-powder formula is the effective formula
11 rather than the Minnesota-Wisconsin Series, that has created
12 a loss of income to producers under Order No. 1 for the months
13 of October, November and December, a total of \$1 million
14 675,792 dollars?

15 A That is correct.

16 Q And the corresponding figure for example as shown
17 by your exhibit for Order No. 2 is over \$6 million dollars?

18 A Yes.

19 Q Do you have any further comment on this exhibit at
20 this time?

21 A Not at this time.

22 Q Will you proceed?

23 A In addition to our concern for the reduction in the
24 blend price and the resultant loss of income, there is another
25 urgent reason why this provision should be suspended

1 immediately. If this provision is allowed to remain in the
2 order it will have a domino effect and will, without question,
3 seriously erode the Basic Formula or Minnesota-Wisconsin
4 Series Price for this reason.

5 This continuance of the butter-powder formula in
6 these orders will result in processors who manufacture Class 2
7 or Class 3 products from lower priced milk having a competitive
8 advantage over processors of like products produced from
9 Class 2 or Class 3 milk priced on the Minnesota-Wisconsin
10 Series Price.

11 Cheese produced from milk regulated in the butter-
12 powder formula areas has an approximate 12 cents per pound
13 price advantage over the same type of cheese produced in the
14 Minnesota-Wisconsin regulated orders.

15 Nonfat dry milk produced from milk regulated in
16 the butter-powder formula orders has an approximate seven
17 cents per pound advantage over powder produced in the M-W
18 regulated orders.

19 Butter produced from milk regulated in the butter-
20 powder formula orders has an approximate 15 cents per pound
21 advantage over butter produced in the M-W regulated orders.

22 I might add here that as far as these figures are concerned,
23 they could be adjusted and come out with the same results,
24 depending on whether or not you wanted to assess more of a loss
25 to one product than to the other.

29a

1 But this relationship would be maintained as far
2 as the difference is concerned. This will, without question,
3 in a short period of time result in a drop in the price of
4 cheese and nonfat dry milk and with it an unacceptable drop
5 in the Minnesota-Wisconsin Series Price.

6 This would result in even further, broader and more
7 widespread declines in the price levels of milk over most
8 of the nation because of the Minnesota-Wisconsin Series or
9 the Basic Formula's relationship to Class 1 prices and in many
10 orders the Class 2 and Class 3 price as well.

11 At this time we would like to enter another exhibit
12 illustrating the effect that this condition is already having
13 on milk prices in the Minnesota-Wisconsin area.

14 Q Mr. Berkahn, is the document you refer to a one-
15 sheet document?

16 A Yes.

17 Q It is identified with words at the top, quote,
18 "Lost markets", end quote, January 1974, end quote, is that
19 correct?

20 A Yes, that's correct.

21 Q Was this document prepared under your direction and
22 supervision?

23 A It was.

24 MR. COCHRAN: Judge, I hand you 12 copies of a
25 document and ask that it be marked.

1 JUDGE McALPIN: Let the record show that the said
2 document is marked for identification as Exhibit X-11.

3 (The item referred to was marked
4 for identification as Exhibit
5 X-11).

6 BY MR. COCHRAN:

7 Q I believe you have some explanation of this material
8 in your prepared statement?

9 A Yes. This illustrates the number of loads per week
10 of milk that NFO has had to move into alternative markets
11 because of markets being lost to milk supplies of lower price
12 being diverted from butter-powder plants.

13 It illustrates the total loss in revenues on the amount
14 of milk directly affected in this one particular area. It
15 also shows the effect this lost revenue had on the total unit
16 by reducing the price 38 cents per cwt. on all milk.

17 I point out that this is a reduction on producer
18 price. We wish to point out here that this exhibit illustrates
19 the condition existing only in one area that NFO is operating.
20 But it is apparent to us that this same condition is existing
21 over a widespread area.

22 Q You made some reference to a unit. Is that a unit
23 of producers for whom NFO is wafting milk in this area?

24 A Yes, it does.

25 MR. HAMMERMAN: May I ask a clarifying question?

1 MR. COCHRAN: That's all right with me, if he is
2 just clarifying. I don't want any extensive cross-examination
3 at this time.

4 MR. HAMMERMAN: On December 11th in your price
5 column M-W plus 40 cents, what does that mean?

6 THE WITNESS: The M-W plus 40 means that this milk
7 was sold under a contract or under an agreed-upon price to a
8 particular buyer. A price relating to 40 cents over the
9 Minnesota-Wisconsin Series Price.

10 BY MR. COCHRAN:

11 Q Is that the circumstance before you --- for these 14
12 loads of milk were you obtaining for that milk before you
13 lost that market to somebody else, you were obtaining a price
14 on the basis of the Minnesota-Wisconsin Price Series? Is
15 that correct?

16 A That is correct.

17 MR. HAMMERMAN: One more clarifying question.

18 JUDGE McALPIN: Just a moment, Mr. Hammerman. Let's
19 proceed and let this information go in, then you raise your
20 questions, when we get to cross-examination.

21 MR. COCHRAN: I think if the witness can go ahead
22 he may have fewer questions.

23 JUDGE McALPIN: Right. You may proceed, Mr. Cochran.

24 BY MR. COCHRAN:

25 Q Under our alternative heading you have a dollar forty

32a

1 cents; will you explain that?

2 A In order for us to provide a market to our members
3 for this product, the only obtainable market that we were able
4 to find for those particular loads of milk was a market that
5 returned back to us a price equivalent to \$1.40 cents below
6 the Minnesota-Wisconsin Series Price.

7 Q Is there included in that \$1.40 some additional
8 transportation costs that you didn't have when you were
9 supplying the market that you lost?

10 A Yes, that's correct. There could well have been.

11 Q Let's go to the seven loads per week by way of
12 illustration. That is the fourth figure in the first column.
13 Before you lost that market, were you obtaining for that
14 milk the Minnesota-Wisconsin Series Price plus 45 cents?

15 A We were.

16 Q Then the alternative outlet market, after you lost
17 the market you did have, does that indicate that you obtained
18 for that milk at the second market the price equal to the
19 Minnesota-Wisconsin value, plus 35 cents?

20 A Yes, it does.

21 Q Then the loss to your members was 10 cents on a
22 hundredweight shown in the final column?

23 A That is correct.

24 Q Will you explain please, sir, the figures in the
25 last two lines of this document?

33a

1 A The 77 loads per week figured at 47,500 pounds per
2 load would equal 14 million 630,000 pounds of milk per month
3 that was directly affected by the need of NFO seeking altern-
4 ative markets for this milk.

5 The result was that these alternative markets result-
6 ed in a loss of income of \$156,994 dollars which when blended
7 back over all of the milk in this unit was equivalent to a
8 reduction of 38 cents per hundredweight price paid to pro-
9 ducers.

10 Q Will you continue with your statement?

11 A Since NFO is operating statewide in both Minnesota
12 and Wisconsin, and is the only producer organization to do so,
13 it is reasonable to expect that a 38 cent drop in NFO producer
14 price will result in a corresponding drop by other markets
15 for milk in the two states.

16 This drop in price will be reflected in a correspond-
17 ing drop in the M-W Series and will lower Grade A prices all
18 across the nation. There is no reason to expect that this
19 situation we have described will cease until the price has
20 dropped to near government support level.

21 I might add here that with the movement of finished
22 products, such as cheese and the nonfat milk and butter, and
23 various other products with modern transportation and communi-
24 cation and the fact that buyers operate nationwide, there is
25 no reason for us to believe that if the condition continues to

1 exist that the price is going to be continually eroded until
2 it has dropped to near government support level.

3 So regardless of the action taken at this hearing,
4 it is certain the imbalance in price for Class 2 or Class 3 in
5 the various orders will be eliminated. The only question is
6 at what level these prices will be balanced. We have an oppor-
7 tunity now, by suspension action, for all classes of milk in
8 all orders to contribute equitably to producers' income.

9 If the Minnesota-Wisconsin Series Price breaks, pro-
10 ducers' income will fall drastically. This of course is un-
11 acceptable and will most likely result in producer organizations
12 in order to maintain producer income, to further increase
13 Class 1 premiums.

14 To recover the price lost through the erosion of the
15 Minnesota-Wisconsin Series, it would require an increase in
16 the super pool premium of substantial proportions. This we
17 feel would be a mistake.

18 An argument against elimination of the butter-powder
19 ~~numbers~~, I am sure will be that price for butter and powder
20 cannot be increased to the level necessary to return the Minne-
21 sota-Wisconsin Series Price for milk manufactured into butter
22 and powder.

23 We feel that the only way that this can be accomp-
24 lished is we must realize that producers, in order to continue
25 in production, are going to have to have a price of milk that

1 relates to their cost of production. The market system then,
2 it will be necessary to add to it, if necessary make allowance
3 and reflect that total price back into the market system. I
4 am sure that the argument, as far as passing through can and
5 has been made in regard to Class 1 prices by various propriet-
6 ary handlers.

7 At the Clayton hearing last summer, testimony was
8 presented by Mr. Glen Lake representing the National Milk
9 Producers Federation. His plea was most eloquent as to con-
10 ditions in his local area, Order No. 40, as well as the east-
11 ern seaboard orders, in which he called for higher producer
12 prices.

13 However, in response to a question by the represent-
14 ative of Deans Foods as to how certain increased costs were
15 to be passed through, Mr. Lake responded, Pages 65, 66,
16 Volume 1, "From my personal knowledge I know and recognize
17 that there is a problem in passing through certain raw milk
18 price increases under certain types and kinds of bidding.

19 "I think here our position is though that the need
20 for producer prices and therefore reflected in producer income
21 is overriding." We are not asking for anything more at this
22 hearing relating to the lower classification of milk than
23 what the National Milk Producers Federation requested at the
24 Clayton hearing relating to Class 1 prices.

25 If the nations farmers are to continue to provide

1 this nation with the assurance that we can be self-sufficient
2 in our supply of food rather than rely on unstable and even-
3 tually overpriced supplies from foreign lands, not to mention
4 the questionable health standards under which these products
5 are produced, they will have to receive prices which will
6 reflect their cost of production.

7 To continue to expect farmers to operate under a
8 market system that returns to them whatever is left rather
9 than what they need and deserve is not only unfair but will
10 continue to lead to erosion of producer numbers at an even
11 more accelerated rate.

12 Q One question. Is it your summation that the Minne-
13 sota-Wisconsin Series value is determined on the pay price
14 observed by manufacturing plants located in Minnesota and
15 Wisconsin; is that correct?

16 A It is.

17 Q Those plants whose paying prices make this deter-
18 mination, is there included in that group of plants both
19 butter-powder plants and cheese plants?

20 A Yes, there is.

21 Q Do you have anything else you want to state at this
22 time?

23 A Not at this time. .

24 MR. COCHRAN: Your Honor, this is all we have at
25 this time. I think after we hear from other parties we may

CROSS EXAMINATION

BY MR. WILZS:

Q Mr. Berkhahn, apart from your printed text and in a description of certain of the exhibits, either eight, nine, ten, or eleven, that were entered into the record just before the luncheon recess, you and your counsel, Mr. Cochran, talked about the fact that you lost the market.

I would like to inquire into what that phrase means. I might not have followed it because I did not have the exhibit available.

I am referring specifically to exhibit number 11. I think the sense of your remarks were that you lost the market.

Does the phrase "lost the market" mean that a particular handler would no longer buy the milk at the M and W plus forty cents price?

A Yes. This is correct.

Q And then you went to the next alternative in your business judgment?

A Yes.

Q Whatever the difference was that you asked of the first buyer and what you got from the second buyer is the loss in the fifth column of exhibit number 11.

A Yes.

Q That is not intended to reflect true value, is it? Is this the loss that you encountered over your asking price

1 and your getting price?

2 A Well, if I understand your question correctly,
3 maybe I can do it this way.

4 The loss represents what we were getting for the
5 milk versus what we got for it after we were able to obtain
6 an alternative market.

7 Q In what way did the necessity for an alternative
8 market come about in respect to the 14 loads per week, market
9 A on exhibit 11?

10 A Market A was purchasing milk from NFO under an
11 agreement whereby we agreed to supply two loads per day and
12 they agreed to pay Minnesota Wisconsin plus twenty cents.
13 This was a verbal agreement.

14 We did not have any long-term commitment in effect.
15 The buyer notified us that the lower priced supply of milk
16 was available and he notified us that he would no longer be
17 able to continue to have use -- would continue to be able to
18 purchase the milk from us.

19 Q He had an offer for a compatible supply of milk
20 at less cost to him than you proposed to charge?

21 A Well, as far as we were able to determine, yes. We
22 did not check into the validity of the statement that he made
23 to us.

24 We do know that the plant is continuing to operate
25 at the same capacity it did so we have no reason to believe

1 that he did not, indeed, secure that alternative supply.

2 Q Would you care to enlighten me as to how NFO
3 arrives at the margin over the M and W price? I see them
4 listed at plus 40, plus 70, plus 55, and so on.

5 A It is arrived at by negotiation with the buyer.

6 Q Then, in taking the first part of that column on
7 exhibit 11, the 14 loads a week that were asserted to be
8 lost -- and I do not contradict that they were, in one sense
9 of the word -- the 40 cents over the M and W was the nego-
10 tiated price.

11 A That is correct.

12 Q At some point in time, the buying handler decided
13 he did not want to pay the 40 cents over.

14 A Yes.

15 Q Therefore, that is a loss.

16 A It is, as far as available money that we had to
17 reflect that.

18 Q It is a loss, strictly speaking, as compared to
19 the price that you ultimately got for the same volumes of
20 milk and that is what the loss column means; is it not?

21 A Yes.

22 Q I do not quarrel with the matter. I would be as
23 distressed as you are.

24 I just want to make sure about loss.

25 Mr. Cochran suggested a line of questioning in

1 describing exhibit 11 in which he used the words "lost to
2 market".

3 Actually, the market was not lost. You got an
4 alternate market at a lesser price than you had previously
5 negotiated.

6 A That would be correct.

7 Q All the milk of NFO has a home.

8 A Yes, sir; indeed.

9 Q I note that, in the latter part of your testimony
10 which I do not believe has been marked for identification but
11 is in the record, you referred to remarks made by Mr. Glenn
12 Lake representing National Milk Producers' Federation.

13 A Yes.

14 Q I am not suggesting that I do not concur with Mr.
15 Lake.

16 I am wondering, however, if you, as an expert
17 witness, want to adopt his remarks as your own; that a mere
18 reference to what somebody else says sometimes does not have
19 sufficient probative value.

20 A I am sorry. I had difficulty following you.

21 I cannot hear you.

22 Q I wonder if you want to adopt the language of Mr.
23 Lake as you recited in your testimony in chief, as if it were
24 your own.

25 MR. COCHRAN: If Your Honor please, I object to

1 that question from this standpoint. The witness explained,
2 rather thoroughly, in his direct testimony why he alluded to
3 Mr. Lake's testimony, showing that Mr. Lake's position with
4 respect to the matter of an increase in Class I price corres-
5 ponds to the witness' position with respect to an increase in
6 the -- or a decrease in the Class II price so I do not know
7 that he wants to adopt what Mr. Lake said for the purpose of
8 Class I price, other than to show that the principle of Mr.
9 Lake with respect to Class I was the same as Mr. Berkhahn's
10 with respect to Class II prices.

11 MR. WILES: I do not think we want to burden the
12 record with any real argument about this.

13 I am trying to find out if we can give to the
14 adoption of that statement in principle any particular proba-
15 tive value to the Secretary.

16 As it stands now, I think it has none. If he
17 wants to adopt that, in principle, which I think he suggests
18 here, I certainly would not object.

19 I agree with Mr. Lake myself but I think if we
20 let witnesses go up and just recite remarks of people that
21 are made here and there and then say, we are not much differ-
22 ent than they are, it does not make much sense.

23 BY MR. WILES:

24 Q I wonder if you do adopt that, in principle, as if
25 it were your own statement?

1 A When I deviated from my prepared statement to tell
2 you what our position was on this, we felt the answer to the
3 possible argument against the elimination of butter-powder
4 snubbers and that the price could not be gotten from the pro-
5 duct reflected the higher price of milk, we stated very clearly
6 that our position was that we felt that the price of milk
7 would have to be reflected to into the price of product in
8 the same manner as what Mr. Lake suggested they would have to
9 do as far as Class I handlers sought to do at the Clayton
10 hearing.

11 I think this clarifies, as nearly as I can, what
12 we were attempting to say.

13 Q I just have one other question.

14 I am referring to Exhibit Nine which has been
15 received in evidence.

16 On the front page of that, just so that I have it
17 clear in my mind, you have, in the first column, "Federal
18 Order"; the next column, "Loss In". It is subdivided into
19 "Producer" and "Production" then "three months" and then
20 "Total".

21 The producer figures are figures that relate to
22 October, '72 -- pardon me. October, 1973 as opposed to Octo-
23 ber, 1972 in each month.

24 A Yes.

25 For each respective month.

1 Q It would not be statistically correct to add up
2 those producers, would it?

3 A We recognized that that would be a problem and, for
4 that reason, we included the handwritten information on the
5 bottom which would actually represent the loss in total
6 number of producers for that 15 month period from October,
7 '72 to December of '73 which would accurately reflect the
8 loss of producers in each order, rather than leave the some-
9 what misleading impression that, by adding 363 and 315 and 213,
10 would be the total loss of producers in Order 1.

11 Q Then that handwritten material on the bottom of
12 page one of Exhibit Nine covers a 15 month period and takes
13 October, 1972 as the base period and then shows the number of
14 producers that have stopped production in the 15 month period
15 from that point until December, 1973?

16 A That is correct.

17 If you will look on the next page, for example,
18 under Order Number One, you will take October, 1972. The
19 total there is 7,120; then take the December, 1973 total of
20 6,721. You should have a difference of 379.

21 Q But it is proper, notwithstanding the fact that
22 it not proper to add up the producer numbers, it is proper
23 to add up the milk numbers because, I presume, that the milk
24 numbers, that is as Federal Order One horizontal column, is,
25 as I read it, 22 million pounds off from October of the

1 preceding year.

2 A That is correct.

3 Q Is the next number 15 million pounds off from
4 November from the preceding year?

5 A Yes.

6 Q And December is 15 million pounds off December of
7 the preceding year?

8 A Yes.

9 Q I am surrounded on either side by eminent economists.
10 I have difficulty with this.

11 Would it be that the milk which might normally be
12 reported in December of 1972 would be off 52 million pounds --
13 December of 1973 be off 15 million pounds from December of '72,
14 everything else being equal?

15 A Maybe I should have one of your economists here.

16 MR. COCHRAN: Are you asking him to explain the
17 52 million pounds, what that means?

18 MR. WILES: Yes.

19 THE WITNESS: The 52 million pounds is the sum of
20 the 22 million and the 15 million and the 15 million which
21 represent the drop in production for those three months in
22 1972 -- I am sorry. For those three months in 1973 as com-
23 pared to those same three months in 1972.

24 So, for those three months, production in Order
25 Number One would have been 52 million pounds less than for

1 those same three months a year earlier.

2 MR. WILES: Thank you very much.

3 JUDGE: Further questions?

4 Mr. Morris?

5 BY MR. MORRIS:

6 Q Mr. Burkahn, you have before you Exhibit Ten, do
7 you not?

8 A Yes.

9 Q Do I read Exhibit Ten properly if I assume that the
10 prices reported opposite the word "snubber" for each order are
11 the actual blend prices which were in effect in those markets
12 under the appropriate months?

13 A Yes. This is correct.

14 Q And the MW prices are the prices and estimated
15 blend, I take it, based on the market utilization that would
16 have obtained had the Minnesota Wisconsin been the floor; is
17 that correct?

18 A Had the Minnesota Wisconsin price been used as the
19 Class II or Class III price in the Order, that is what we
20 calculated the blend would have been in those various Orders.

21 Q That, of course, is true if all other factors are
22 equal. Am I correct?

23 A Yes.

24 Q Including utilization.

25 A Yes.

I might add that we did use the actual utilization.

Q Now, this exhibit, together with your statement in your prepared testimony relating to blend prices, suggest that what you seek is an appropriate blend price being the price which farmers receive.

Am I right?

A A blend price which would reflect their actual cost of production so they can remain in business.

Q Can you tell me, for instance, in Order Four what that blend price is?

A For which month?

I do not quite understand what you mean.

Q Let's take right now.

What is the price that you think farmers should be paid for their milk to reflect all costs of production?

A We are in the process of determining actual cost of production and our study is not in its final form. However, we had subjected this to the examination of a number of agricultural economists and we attempted to arrive at an aggregate way of determining cost of production.

We do not have a figure at the present time that we can relate to with any degree of accuracy relating to Federal Order Four. It is, however, apparent to us that farmers are not receiving cost of production because of the large numbers of them that continue to go out of business.

1 Q Well, in Federal Order Four, between November and
2 December, there was an increase in producer numbers.

3 That does not suggest that, at least over that
4 time period and at current level of prices, that more went
5 out of business than remained in business.

6 MR. COCHRAN: Are you referring to the information
7 on Exhibit Nine for Order Four?

8 MR. MORRIS: Yes.

9 MR. COCHRAN: Did you say that indicated there
10 had been an increase in producer numbers?

11 MR. MORRIS: Yes; from November, 1973 to December,
12 1973, we have more producers on the market.

13 MR. COCHRAN: You are referring to the 406 and 408?

14 MR. MORRIS: Well, the witness can find the figures,
15 I think.

16 THE WITNESS: There is an increase of two, yes.

17 However, I point out that the total loss in Order
18 Four for the 15 months total was 439.

19 MR. MORRIS: Well, there is no loss, certainly, in
20 November to December of '73.

21 THE WITNESS: There is a slight increase, yes.

22 BY MR. MORRIS:

23 Q Perhaps we can get an answer in this way.

24 You are unable to tell us what the proper price is
25 to reflect cost of production.

1 You have asked, however, for a change in the Order
2 including Order Four, as well as one, two, 15 and the others,
3 that will increase the price.

4 Let me ask you what your projections are with re-
5 spect to the actions of the Minnesota Wisconsin series for the
6 next six months.

7 A I would say a great degree of that is going to
8 depend upon the outcome of this hearing.

9 I think a favorable action of this hearing should
10 allow us to sustain low prices at their current level; how-
11 ever, if this low-priced area continues to exist making it
12 possible to affect the price of product produced from milk
13 in Minnesota and Wisconsin, as I said in our prepared state-
14 ment, we anticipate the price could drop to Government support
15 level.

16 I have read where other producer organizations -- and
17 I have talked with various people in the industry who concern
18 in that.

19 Q I think we are more interested in your opinion.

20 Perhaps, as a preliminary matter before we go any
21 further, I should ask you: you are employed by NFO, are you?

22 A Yes.

23 Q What is your capacity with them?

24 A I am assistant to the director of Dairy Commodities.

25 Q How long have you been with them?

1 A Six years this summer.

2 Q What did you do prior to that?

3 A I was a dairy producer.

4 Q You were a farmer?

5 A Yes.

6 Q Are you a graduate of college or any sort?

7 A I am not.

8 Q Are you a statistician of any sort?

9 A No, sir.

10 Q Does NFO retain an economist, as such?

11 A We have access to the services of an economist;
12 yes, sir.

13 Q Who is your economist?

14 A We have, from time --

15 MR. COCHRAN: Your Honor, I object to that question.

16 It is entirely -- I do not know whether it means
17 a great deal for Mr. Morris to know all the names of the
18 employees of NFO.

19 MR. MORRIS: I assume, if he is stating a name,
20 sir, he would be stating a name on whom you relied for the
21 basis to form his opinion.

22 I think it is clear that his own qualifications
23 are, at best, not scholastic. I thought it might help to
24 have the name of an economists upon whom he relied for making
25 the kind of prediction that I think we have to ask him to

1 make in this hearing.

2 JUDGE: I think if the question were based upon
3 whether or not he did rely upon somebody else, it may be all
4 right.

5 If you are simply inquiring as to who it is, I
6 will sustain the objection.

7 MR. MORRIS: I will rephrase the question.

8 BY MR. MORRIS:

9 Q In making this prediction, did you rely upon an
10 economist?

11 A No. I would say not.

12 We relied basically on our experience and under-
13 standing of the present marketing system.

14 Q You mean you relied don't you because it is your
15 testimony?

16 A Yes; however, it was prepared with the aid of
17 several other people in our department.

18 Q Are any of them economists?

19 A No, sir.

20 Q Are any of them statisticians?

21 A We have a man working in our department who holds
22 a Masters Degree in Marketing. He assisted us in this.

23 Q To come back, for a moment, then, to your predic-
24 tions with respect to Minnesota Wisconsin series, let us
25 assume, for a moment, that the Minnesota Wisconsin series were

1 the Class II or Class III or manufacturing price determinate
2 for the butter-powder formula.

3 What weight, if any, did you give to the presence
4 of foreign powder on the market today?

5 A We feel that the imports into this country, while
6 we by no means support the action taken, but the actual effect
7 of the imports, up to this point, has been largely psychologi-
8 cal.

9 Q Do you have some basis for this finding, that it is
10 psychological?

11 A Yes.

12 I think the evidence that the price of butter
13 dropped simply because there is an announcement that imports
14 were coming indicates a psychological factor; also, the fact
15 that the price of cheese has not responded, the price of
16 cheese has not dropped as a result of imports indicated that
17 it is depending on a condition that is more psychological than
18 anything else.

19 Q Well, since you used cheese as your comparable
20 determinate, let me ask you if you will to tell us what you
21 believe, in addition to the world cheese market, is now the
22 determinate with respect to the ability to import hard cheeses
23 as opposed to powder?

24 A In consultation with people from foreign agricul-
25 tural services --

1 Q Do you know?

2 MR. COCHRAN: I would suggest that Mr. Morris let
3 the witness give his complete answer and don't intrude on
4 him before he makes his answer.

5 MR. MORRIS: My apology.

6 I think the witness can prevent me from intruding
7 if he thinks I am.

8 MR. COCHRAN: Just let him finish his answer.

9 THE WITNESS: At the time the policy was announced,
10 we made some calls to people here in Washington who worked
11 with the Foreign Agricultural Service. I believe this is
12 the correct definition.

13 They informed us that there were, indeed, large
14 volumes of cheese available in the world for import, for ex-
15 port to the United States.

16 BY MR. MORRIS:

17 Q If that were the case and if that cheese comes into
18 the United States, as proposed, in that quantity or any greater
19 quantity, psychological or not, at the moment when it does you
20 expect it to effect the price; do you not?

21 A Not necessarily.

22 Q Why?

23 A If, for example, the price of milk that is used to
24 manufacture cheese out is established through Federal Order
25 action or through contract, we feel that that price of cheese

1 is going to continue to be reflected through into the value
2 of cheese for the domestic market.

3 Q There is no way that the ingredient cost of any
4 imported cheeses can be controlled by action that you take
5 here, is there?

6 A No. This is correct.

7 Q Come back, then, to the use of the Minnesota
8 Wisconsin figure as a determinate.

9 Can you give us for, say, the next six months your
10 impression of the blend price in any one of the four Orders I
11 am here interested in, One, Two, Four, and Fifteen, during
12 the next six months?

13 A The only way I can answer that with any degree of
14 accuracy is that that will be very much related to what happens
15 to the Minnesota Wisconsin series.

16 Q You are seeking, are you not, to assure a blend
17 price which will produce enough to cover costs or production
18 and a reasonable profit which I think you do not now know,
19 which, in any event, will be higher than it is at present.

20 A Yes.

21 Q What I think we have to get at in order to have
22 anything on which to really base a decision affecting the
23 prices is what that price ought to be and that is what I am
24 seeking to elicit from you.

25 Where do you want the blends to go and why?

1 A I think I will have to refer again to the earlier
2 answer that I gave you.

3 We have sought, from various government agencies,
4 universities, to determine actually what the cost of production
5 is. We have not been able to find anyone who has figures that
6 can tell us this.

7 As I said, this was the reason that we undertook a
8 study of our own and we have done this recently and we have
9 not completed it. But, I repeat that it is evident that
10 farmers are not receiving a just return or otherwise they would
11 not be discontinuing production.

12 Q So what we really come down to, then, as the base
13 of your testimony is that you would like to see an increased
14 price now and this is based, rather than on cost of production,
15 it is based on these figures relating to who else -- who has
16 gone out of production and how much production is down.

17 Is that correct?

18 A We certainly feel that if we are going to maintain
19 production, even at its current level, we are going to certainly
20 have to maintain or increase the current price levels in order
21 to accomplish that. We see no other alternative but to see a
22 continuing and perhaps drastic decline in production in the
23 United States unless prices are maintained and increased in
24 relationship to increased costs.

25 Q What would you think, based upon your experience,

1 the least time was for a change, a measurable change in pro-
2 duction which reflected some price increases?

3 A A change like that could involve a considerable
4 period of time simply from the standpoint that, in the case of
5 a cow producing milk, it has to be per animal which requires
6 a period of time.

7 Q Are we talking about a year? Nine months, two years?
8 Is it something of that order?

9 A It could be two years.

10 Q I wonder if you would, for a moment, look at your
11 exhibit in which you reflect lost production. I believe it
12 is Exhibit Nine.

13 This exhibit compares 1972 with 1973. In the first
14 place, can you give us, from your knowledge, the relative
15 position of 1972 as a milk production year, say, in the last
16 two decades or so?

17 A I would say that it is pretty evident to us that
18 milk prices have not been at sufficient level for a consider-
19 able period of time, for many many years. I think the fact
20 that we have been aware of it, I think everybody is aware of
21 the fact that we have had declining production which I think
22 could be attributed to insufficient price.

23 It simply means that I think we are going to have
24 to take a new look at something and figure out some new
25 ways of approaching things, if we are going to reverse this

1 trend.

56a

2 Q If I understand your answer, you would then expect
3 1972 to have been a low production year as well?

4 A I do not have the figures before me here actually
5 but I do believe '72 was down from '71. I do not know what
6 the percentage was but I know it was down.

7 Q Would it alter your testimony if I directed your
8 attention to the fact that it was the fourth highest year in
9 the last two decades and it was not down from '71?

10 A '72 was not down from '71?

11 Q That is correct.

12 A I would want to check this.

13 Q It would influence your thinking, though, would it
14 not?

15 A No, not really.

16 Q Then why not?

17 If 1972 showed an increase over 1971, and if the
18 lead time for price changes to affect milk is of the order of
19 magnitude which you suggest, what caused the increase in 1972?

20 A What caused the increase in '72?

21 Q Yes; over 1971.

22 A I do not know. I would not be able to give you an
23 answer on that right now.

24 Q Returning, for a moment, to Exhibit Ten, I think
25 it is, in which you laid out your various blend prices.

1 Are you able to compare the blend prices towards
2 the end of 1973 which you reflect on Exhibit Ten with the
3 blend prices in any of the Orders for the same months in 1972?

4 A We could but we did not for the purpose of this
5 exhibit.

6 Q You would agree that the blend prices were very
7 substantially higher; say, on the order of \$2.00?

8 A Right; and I did point this out in my statement,
9 that prices were up as the result of the increase in Minnesota
10 Wisconsin series.

11 Q Well, I am having some difficulty, given the way
12 those prices are moving and may be expected to move, in under-
13 standing how you determine, in a finite way, that right now
14 another 38 cents was appropriate.

15 Was this Minnesota Wisconsin average just a handle
16 to raise prices somewhat more?

17 A We find it very difficult to understand why milk
18 prices for similar products or for identical products cannot
19 be priced at a uniform price across the country. Simply because
20 they happen to be produced in a different geographical area,
21 we see no justifiable reason why they should be priced at a
22 lower level.

23 It seems, at this point, that the Minnesota
24 Wisconsin series is a most, let's say, convenient way of
25 arriving at value price and it is our position that the market

1 system will have to relate that price, through the processing,
2 distribution and marketing of that product to reflect product
3 values equivalent to return that price of milk.

4 Q Well, the assumption underlying that is that, in
5 some other Order or some other form, the Minnesota Wisconsin
6 price is appropriate.

7 Had you considered directing your attention to, say,
8 Chicago Orders where the Minnesota Wisconsin price is in effect
9 and bringing those Orders into line with said butter-powder
10 prices?

11 MR. COCHRAN: Objection, Your Honor.

12 The Chicago Order -- what happens there is not of
13 issue in this hearing.

14 MR. MORRIS: May I answer that, sir, in case you
15 have any intention of ruling against me?

16 JUDGE: You are trying to anticipate my ruling but
17 you may answer.

18 MR. MORRIS: My answer, sir, is that the witness
19 introduced the Orders with the Minnesota Wisconsin price
20 in them as a reason for supporting that price here when he said
21 the prices ought to be based on the same formula throughout
22 the country.

23 Necessarily, interrogation, therefore, involves
24 some analysis of his view of those Orders.

25 JUDGE: You may proceed.

1 BY MR. MORRIS:

2 Q The question was did he consider amending those
3 Orders to provide uniformity with the butter-powder prices which
4 is effected in the Orders here in consideration and his answer
5 was, no, I do not think so.

6 A May I add to that answer, please?

7 The reason we did not is simply because Minnesota
8 Wisconsin, which is derived from the values of milk converted,
9 manufactured products -- butter-powder, cheese and related
10 products -- it seems reasonable that that would reflect an
11 accurate figure for what milk is worth going into those pro-
12 ducts.

13 Q This suggests a selection between the butter-powder
14 price and the Minnesota Wisconsin price.

15 What we are really getting at -- I am not simply
16 asking for a statement that you like one better than the other
17 or that one is priced higher than the other -- I am asking for
18 why.

19 Perhaps you might like to tell us what the formulas
20 are based on and, if so, why you reject the one set up the
21 other one?

22 A If I understand the question right, one is based on
23 the formula derived from the value of the butter-powder for-
24 mulating order and determines the value of milk for that
25 usage.

1 Minnesota Wisconsin is derived at by using the
2 values of milk sold for manufacturing purposes in Minnesota
3 and Wisconsin.

4 Surely, the determination of the Department of
5 Agriculture reflects the average price made.

6 Q If that explains what you know about it, fine, but
7 why do you select one over the other?

8 A As I said earlier, it appears to us that the
9 Minnesota Wisconsin series is what it is said to be, reflect-
10 ing the value of milk going into manufactured products.

11 Q You do understand the propossal here? I am correct
12 am I not that your proposal is to price milk going into
13 butter and powder here in these Orders at the Minnesota
14 Wisconsin price?

15 A The same price of milk going into butter and powder
16 in other parts of the United States.

17 Q Specifically in Minnesota and Wisconsin and can you
18 and I agree that the Minnesota Wisconsin price is primarily
19 determined by the cheese market, and not the butter-powder
20 market.

21 A No. I will not agree with that.

22 Q Then what is it, as a selection between the two
23 formulas, that makes you choose the Minnesota Wisconsin
24 price?

25 You said today it is derived from a series of

1 Minnesota Wisconsin. That certain is true.

2 A I say the reason for selecting it is because the
3 majority of the milk is priced on that formula.

4 Q The majority of what milk?

5 A The majority of the milk going into manufactured
6 products.

7 Q Where?

8 A In the rest of the United States.

9 Q So you base it on the fact that it is your im-
10 pression more milk is priced under the Minnesota Wisconsin
11 series than under the butter-powder formula?

12 A Yes.

13 Q Is it your belief that the butter-powder price will
14 increase to the Minnesota Wisconsin level if the Minnesota
15 Wisconsin series is adopted?

16 A We think the chances of that happening are very
17 good and this is the only way that we see it is likely to
18 happen.

19 Q If that is the case or if that is your belief,
20 what effect do you believe the present support price system
21 and the one shortly to be announced will have on it?

22 A It depends --

23 MR. COCHRAN: Excuse me.

24 Is there an assumption in your question that the
25 prices in the Orders of which you are speaking will continue

1 to be determined by the butter-powder formula?

2 MR. MORRIS: No, sir.

3 MR. COCHRAN: What is the assumption?

4 MR. MORRIS: What I asked him was what effect he
5 expected current support price policies to have on his new
6 butter-powder price or formula price would approach the
7 Minnesota Wisconsin series.

8 This, I admit, I'll assume the knowledge of the
9 present support price program and the two alternatives for
10 next year's program.

11 THE WITNESS: If I understand your question, I
12 would answer it this way: If the Government support price is
13 raised, depending on what level, it would certainly have an
14 effect on what level the prices of butter and powder would be
15 at.

16 However, I feel if the Minnesota Wisconsin series
17 would remain at something above the Government support level,
18 that this would have a very significant effect on what the
19 price of butter and powder would be.

20 BY MR. MORRIS:

21 Q What is your current understanding of the relation-
22 ship between powder and hard cheese under the current program?

23 A Under the what?

24 Q Under the current program.

25 MR. COCHRAN: In order that the witness may

1 understand the program, you said, what is the relation.

2 The relation in what respect?

3 MR. MORRIS: I want to know what the relationship
4 is between the support prices of the two and I would ask him
5 what they were in the past.

6 MR. COCHRAN: Dollar and cents prices are what you
7 are talking about?

8 MR. MORRIS: Yes, sir.

9 THE WITNESS: I do not have the Government support
10 prices here for various products; since we do not market any
11 manufactured products as such as our program is not related
12 to basing anything off of Government support levels, we have
13 not, perhaps, paid as much significance to it in regard to
14 our program as to what other people might.

15 I am not sure that I can respond in any other
16 way to your question.

17 BY MR. MORRIS:

18 Q That is a satisfactory response for the moment.

19 I take it, you did not weigh this in reaching your
20 determination.

21 A Let me answer it this way: We do not regard that
22 the Government support program is going in anyway, either that
23 it is to insure farmers an adequate price nor do we regard
24 that it ever will.

25 So, I guess maybe, if that has any bearing on what

1 consideration we give to the Government support level, I guess
2 this is the way we look at it.

3 Q Let me ask you, in another vein, assuming that your
4 proposal is adopted and that the Minnesota Wisconsin series
5 becomes the price determinate for all the manufactured products
6 in the Orders under consideration, have you related the pro-
7 jected blend to parity upward?

8 A No, I have not.

9 Q Would you turn, for a moment, to your prepared
10 statement.

11 At the bottom of page three, you make the state-
12 ment that gross dairy income rose about ten per cent in 1973
13 and prices paid by dairy farmers for production items were up
14 20 per cent a year ago.

15 Would I understand that ten percent figure properly
16 as an annual average increase?

17 A I do not know how the Government arrived at those
18 figures. I took them out of a Government publication.

19 Q Do you have the source of them with you?

20 A I believe I do; yes.

21 Q Could you tell us what it was?

22 A I would have to look. I have several of them with
23 me.

24 Just a moment.

25 Q Go ahead.

1 A I am not certain but I believe it was in a publica-
2 tion entitled "Dairy Situation, November, 1973" put out by the
3 Economic Research Center in the United States Department of
4 Agriculture.

5 Q Do you have it with you?

6 A Yes, I do.

7 Q May I look at it?

8 A Yes.

9 Q What table was that on, sir, so the record is
10 clear?

11 A I would have to look. I am not sure that I can
12 remember exactly where that came.

13 I believe it was not on a table but was actually
14 in the text.

15 Q I would like to know where it was.

16 JUDGE: I think, Mr. Morris, you can make the
17 search a little later.

18 Let's go on with the question.

19 MR. MORRIS: I cannot really proceed until I know
20 what that figure is, sir.

21 JUDGE: He has said it was ten percent in 1973.
22 You can search him and dispute it later.

23 MR. MORRIS: I am not trying to dispute it. I am
24 just trying to know what he is saying, sir.

25 JUDGE: He is saying it is ten per cent in 1973 and

1 it came from a publication.

2 If he does not find it or you do not find it, we
3 will bring that up.

4 I do not see that that stops you from continuing
5 your questioning.

6 MR. MORRIS: I do not know what kind of an average
7 it was, sir.

8 JUDGE: Let's proceed, sir.

9 MR. COCHRAN: You mean proceed with another ques-
10 tion, Your Honor?

11 JUDGE: To another question; yes.

12 We are not going to stop while he makes a search.

13 You can both make a search at another time and come
14 back and if it is not right, you can raise that point, Mr.
15 Morris, but we are not going to delay here while you make
16 research.

17 MR. MORRIS: Sir, I do not think I am under any
18 obligation to make any search.

19 JUDGE: You are under obligation to ask your ques-
20 tions when I insist that they be asked and I am insisting
21 that they be asked.

22 MR. MORRIS: I will ask the witness, then, if he
23 is able to tell us whether that figure is an annual average
24 or what it is.

25 THE WITNESS: I do not know. I have not found it

1 exactly. I see something that relates to it.

2 BY MR. MORRIS:

3 Q In the same sentence, you made the statement that
4 production items went up 10 per cent a year ago.

5 What do you mean by "production items"?

6 A Again, that was taken from the information, as
7 best I can recall, in this publication.

8 Q Do you happen to recall what the time period
9 of that 10 per cent went, in other words, was it calculated
10 from the beginning of the year to the end of the year?

11 A I am not certain, but I believe that it was
12 as nearly identical to that was in the original article.

13 I would have to believe that it was calculated
14 do not believe that it was calculated to any degree from the state-
15 ment in the Government publication.

16 Q Six, turning to Exhibit 11, can you give us an
17 indication, first with respect to Exhibit A, as to the character
18 of that report? That is, what was said and what was their
19 regulatory system, if any?

20 A I believe Exhibit A was the cheese processing plant
21 which was a regulated plant in the Order.

22 Q Where was it?

23 A In the Midwest.

24 Q Would it be the same as Exhibit B, I am asking.

25 Would it be the same as C?

1 A I do not know. I would have to refer to the coding
2 that was used.

3 I can answer you this way, that the majority of
4 these plants were cheese processing plants but there were
5 some butter-powder operations included in these markets.

6 Q Would you look at your coding and tell us which
7 are which?

8 A I am sorry but I cannot right now.

9 Q Turning, for a moment, to page six --

10 Perhaps I might strike that question and ask one
11 question to clarify the record previously.

12 In answer to my last question, you said, no you
13 cannot right now.

14 Does that indicate that you do intend to produce
15 such information?

16 A I am not sure that I have the coding here with me
17 in Washington. It would, however, be available at our office
18 in Corning but we do not see where that would serve any pur-
19 pose as far as identification.

20 Q I am just trying to understand whether you are go-
21 ing to make it part of this record or not. I do desire it.

22 A I will if it is required but we had not intended
23 to.

24 MR. MORRIS: I take it all I can do at the present
25 time is to ask the Judge to request the witness to do so.

1 JUDGE: I am sorry, sir, but I state this as a
2 generalization; that I cannot require any witness to produce
3 any information if he does not care to.

4 I can require them to be as responsive as possible
5 to questions but I cannot make them testify with reference to
6 any particular point or in any particular way.

7 MR. MORRIS: All I am asking you to do, sir, is to
8 request him. I understand you cannot require him to.

9 JUDGE: I cannot even request him to because if I
10 requested him to do so, I would consider it an order and I
11 cannot order him to do it.

12 MR. MORRIS: Do I assume, then, you do not care to
13 produce it?

14 MR. COCHRAN: Let's just say, Your Honor, he has
15 not produced it so far and he will make up his mind whether
16 he will bring it in later.

17 Does that satisfy you?

18 MR. MORRIS: Not entirely but I do not see how I
19 can get by his counsel on that one.

20 BY MR. MORRIS:

21 Q Turning, if you will, sir, to page six of your
22 statement, at the top of that page you are discussing the
23 affect of continued pricing under the butter-powder series on
24 the Minnesota Wisconsin series and you make the statement,
25 "This will, I take it . . ." this being continued pricing of

1 the butter-powder formula, "This will . . . in a short period
2 of time result in a drop in the price of cheese and non-fat
3 dry milk."

4 May I ask you whether or not you see the Class II
5 price, at least in one of its aspects, as being a price which
6 will permit surplus to be cleared from the market?

7 A We do not regard any milk as surplus at this point.
8 There seems to be a shortage, deficit, in the country.

9 Q If there is a deficit, as you suggest, then is it
10 not the case that butter-powder formula itself will reflect
11 this deficit?

12 A Not necessarily.

13 Q Why not?

14 A Again, we are basing this on the history of market
15 or what we have been able to analyze as far as the way the
16 market has operated in the past.

17 The market basically secures whatever it can out
18 of the product. It takes out what it needs for operational
19 expenses and returns what is left to the producer.

20 We do not see that there is any reason why it
21 should operate any other way if it is permitted to continue
22 to operate this way.

23 Q In the analysis which you indicate you made, what
24 did you find to be the relationship between the Minnesota
25 Wisconsin price, butter-powder series, prior to October of

1 1973?

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2 A As we said in our statement, historically these
3 formulas have worked quite well because, for the most part,
4 at least for short periods of time, the product prices, butter,
5 powder, and the product prices of cheese have been in balance
6 as far as their yield per price of hundredweight of milk.

7 Q They were very close in line prior to October?

8 A Yes.

9 Q What is it, then, that suggests to you that the
10 Minnesota Wisconsin price properly reflects what you term a
11 deficit situation, whereas the butter-powder series does not?

12 A I will have to answer it the same way I did earlier;
13 that the Minnesota Wisconsin is determined by the price of
14 milk purchased from manufacturing grade farmers converted into
15 butter-powder and cheese in Minnesota and Wisconsin.

16 It is apparent that that reflects accurate value of
17 product or accurate value of milk.

18 Q We come back, then, to this statement, as well as
19 the others -- to the objection that the Minnesota Wisconsin
20 series does reflect butter-powder and cheese prices in that
21 area.

22 Can you tell me what the relative volumes of
23 cheese, butter and powder are reflected in that series?

24 A Wisconsin and Minnesota produce approximately 43
25 per cent of the butter in the United States. I believe 50

1 per cent of the cheese and about 43 per cent of the non-fat
2 dry milk; however, the total amount of production in the
3 United States that is priced off the Minnesota Wisconsin is
4 considerably higher than that.

5 Q Are you suggesting, by your answer, that the series
6 is reflective in those proportions of butter-powder and cheese?

7 A Yes.

8 Q One other selection seems implicit in the testi-
9 mony you have made as a matter of judgment.

10 That is, at this time, it is your recommendation
11 that higher blend prices be achieved by raising the manufact-
12 uring price level.

13 A Yes.

14 Q If the desirable end result is to achieve some
15 increase in blend prices, why not Class I at the present time?

16 A Why not increase Class I?

17 We think all classes of milk ought to contribute
18 equitably to the producer income, not just rely strictly on
19 one classification to carry the burden of pricing.

20 Q How would you decide which one was carrying an
21 unequitable burden?

22 A I guess the best way I can answer that is that, at
23 previous hearings, it appears that the only classification
24 under discussion, at least at hearings recently, has been
25 dealing with Class I. It is apparent that there has been a

1 considerable Class I increase in relationship to other factors
2 and in relationship to the Minnesota Wisconsin series price, by
3 considerable over-order premiums in the markets.

4 We welcome this hearing for an opportunity for
5 permitting or obtaining increases of other classifications of
6 milk so that they can more adequately or more equitably reflect
7 true or producer income.

8 I do not know what I can say as to what formula we
9 regard best except that we feel that this Class II price,
10 Class III price, in this area, should be increased.

11 Q Is it not necessary to know how you are going to
12 allocate the burden of finally bearing the losses before you
13 decide you should be in a certain situation for other and the
14 opposite?

15 A I do not want to sound like a broken record here
16 but, yes, we are making some work to the Minnesota
17 Wisconsin series which is the accurate value of determining
18 milk and manufactured products in all the heavy producing
19 dairy states.

20 It just seems reasonable that, if that milk has
21 the best market there, it ought to have the same value in
22 other parts of the country.

23 MR. MORRIS: That is all for the present, sir.

24 Thank you.

25 JUDGE: Thank you, Mr. Morris.

1 MR. COCHRAN: Your Honor, am I to redirect after
2 each cross examination or wait until after all the cross
3 examination is completed?

4 JUDGE: We generally wait until we finish the
5 cross examination; then you can go to redirect.

6 MR. COCHRAN: Thank you.

7 JUDGE: All right, sir.

8 Yes, sir?

9 BY MR. HAMMERMAN:

10 Q Mr. Berkhahn, in answer to some preliminary questions
11 of Mr. Cochran and also in reply to some of Mr. Morris' ques-
12 tions, you mentioned that you are acquainted with the Minnesota
13 Wisconsin price series.

14 Is that correct?

15 A Yes.

16 Q Are you also acquainted with the type of operations
17 in the plants which are included in that price series?

18 A By "acquainted", --

19 Q Maybe I can put it more specifically.

20 Do you know the types of operations in those plants?

21 A Yes, somewhat.

22 I am familiar with the type of operations that
23 purchase milk in those states; yes.

24 Q Do you know whether those plants that are included
25 in the series ship Grade A milk?

1 A No, I do not.

2 Q Do you know whether any Grade A milk is shipped
3 out of the State of Wisconsin?

4 A Yes, there is Grade A milk shipped out of the
5 state.

6 Q From plants which are included in the Minnesota
7 Wisconsin price series?

8 A I do not know which plants are included in the
9 Minnesota Wisconsin series.

10 Q Presumably, then, you do not know what these coopera-
11 tions are if you do not know which plants are included; is
12 that correct?

13 A I do not know what the specific plants are because
14 it is my understanding that that is not information that is
15 available.

16 I understand that the Department selects these and
17 they do not reveal which plants are selected for the purpose
18 of making sure that the series is determined accurately.

19 Q If those plants do sell Grade A milk, the return
20 for such milk would be greater than for manufacturing; would
21 it not?

22 A That depends.

23 Q You mean that are circumstances under which the
24 return for Grade A milk would be less?

25 A It could be. It would depend on the market.

1 conditions.

2 Q Are you aware of any situation where repayment for
3 Grade A milk was less?

4 A I have had plants who have told me that it was not
5 profitable for them to ship Grade A milk.

6 Q But you are not aware of the extent to which Grade
7 A milk was shipped from those plants; is that correct?

8 A I am not aware of what?

9 Q To the extent of which fluid milk was shipped from
10 the State of Wisconsin, let us say.

11 A I do not understand your question.

12 Q I am asking you if you are aware that Grade A milk
13 is frequently shipped from plants in the State of Wisconsin
14 for fluid purposes?

15 A Yes, I am.

16 Q And such milk is shipped; is that correct?

17 A Yes.

18 Q From plants that may be included in the Minnesota
19 Wisconsin price series; is that correct?

20 A Yes; but, again, the milk price that is used to
21 determine series is not the Grade A price but the price they
22 pay their manufacture grade producers for that milk.

23 Q Would you say that, at time, those plants shipping
24 fluid milk make a profit on the sale of that fluid milk?

25 A I would say it is highly unlikely that that sale of

1 Grade A milk would be any more profitable and, in most cases,
2 plants have told us it is not as profitable as it is to keep
3 the milk on the processor.

4 Q The fact remains, to your knowledge, that they do
5 ship such fluid milk; is that correct?

6 A Out of the requirements in the Order; yes.

7 Q And if they have the alternative to either manu-
8 facture or ship fluid milk and they do, in fact, ship fluid
9 milk, would you agree that the shipping of fluid milk is more
10 profitable to them?

11 A No, sir.

12 Q Why would they ship fluid milk?

13 A Because they are required to under the Order.

14 As a matter of fact, there was a hearing not too
15 many months ago increasing the shipping requirements in Order
16 30 because they were not able to get the plants to ship the
17 Grade A milk under the current provisions. It was not profit-
18 able for them to do so.

19 Q And the plants included in the Minnesota Wisconsin
20 price series are those under Order 30, is that correct?

21 A Again, I do not know.

22 So one does, to my knowledge except certain people
23 in the Department of Agriculture.

24 Q Would you know whether any of those plants that
25 are included in the Minnesota Wisconsin price series are not

1 under a market order?

2 JUDGE: Mr. Hammerman, I think we are begging the
3 question.

4 He says he does not know. He says, from his know-
5 ledge, that the determination is made by the Department and
6 you are continuing to ask questions as to what these plants
7 do.

8 If he does not know who the plants are, he
9 certainly does not know what they do.

10 Let's go on to another question, sir.

11 MR. HAMMERMAN: Yes.

12 BY MR. HAMMERMAN:

13 Q Mr. Berkhahn, you enunciate the philosophy, on
14 page one of your statement, and I am reading now from the
15 third paragraph; "The major objective of National Farmers'
16 Organization is to obtain for its members prices for their
17 products that appropriate reflect cost of production plus a
18 reasonable profit."

19 Would you agree with me that that, too, is a good
20 theory that is applicable to manufacturers of milk?

21 A Most definitely.

22 If the market system were operating profitably,
23 that would be the case.

24 Q I point to your Exhibit Number Ten where you indi-
25 cate the differences in Order Number Two between the Snubber

1 price and the Minnesota Wisconsin price.

2 A Excuse me.

3 Did I say if the market system were operating
4 profitably. I meant correctly.

5 I would like to change that; if it were operating
6 correctly, that would be the case.

7 Q I do not have to repeat what I said so far. I
8 guess you heard what I said.

9 You indicate that, for the months of October,
10 November, and December, 1973, had the Minnesota Wisconsin
11 price been used in Order Two, there would have been a higher
12 Class II price to the extent of 14 cents, 27 cents, and 47
13 cents, respectively.

14 Is that correct?

15 A The blend price to producers would have been higher
16 by that amount.

17 Q I stand corrected.

18 The blend price would be higher.

19 Have you made a similar computation for the month
20 of January, 1974?

21 A No, we have not.

22 Q I will ask you to bear with me for a moment and we
23 will go through a computation for that month.

24 MR. COCHRAN: Objection, Your Honor.

25 If Mr. Neumann wants to put that in the record, I

1 think he should put it in through his witness.

2 We have not attempted to show any figures for
3 January. If you want to put them in, I think you have that
4 opportunity.

5 JUDGE: Objection is well taken.

6 If you are going to do computation, Mr. Hammerman,
7 you may be put under oath and so testify or put on a witness.

8 MR. HAMMERMAN: Well, let me put it this way;
9 rather than using specific figures for a specific month, let
10 me ask this theoretical question of the witness.

11 BY MR. HAMMERMAN:

12 Q If the difference between the price produced under
13 the snubber and the price produced under the Minnesota
14 Wisconsin price series were, let us say, 70 cents or better,
15 can you see how a manufacturer of butter and powder can operate
16 at a profit?

17 A The best way to answer that, I would say he would
18 have to increase the price of product he was producing from
19 that milk.

20 Q And if he were making butter and powder, do you
21 think that that operator can unilaterally increase that price?

22 A Well, I think, if everyone else who is purchasing
23 milk at that price is going to have to do likewise, it seems
24 reasonable that the price of those products would be increased
25 in the amount necessary to reflect the cost of milk plus a

1 profitable make allowance.

2 Q Am I correct in assuming, in your answer to my last
3 question, you assumed that all the milk available for butter
4 and powder is priced under a market order: is that correct?

5 A No, it is not.

6 Q So, if not all of the milk used in the manufacture
7 of those products is priced under an Order, then there is
8 competition with milk that is not regulated by the Government.

9 Is that correct?

10 A Well, you are correct but the thing I would want
11 to add to it is this: I am not aware of any large supplies of
12 unregulated or manufactured grade milk in existence in these
13 Orders of any significant consequence.

14 Q Your answer to me was not really responsive.

15 You referred to milk in these Orders.

16 My question is, is there milk not under any order
17 which is used for the manufacture of the dairy products to
18 which you referred?

19 A I would have to say I do not know.

20 There may be some but I do not know.

21 Q So that, in a national basis, you are telling me,
22 then, or saying for the record that you are not aware of any
23 milk used in manufacture in the United States that is not
24 under a market order?

25 A If you are going to include the United States, yes,

1 I will have to say there is milk that is not included in
2 market orders that is used for processing butter and powder.

3 Q Would you say that, in the sale of butter and
4 powder, there is competition nationally; that, if butter can
5 be produced for less money in one area, it would find its
6 way to markets in other areas.

7 Would you agree with that?

8 A I agree with you wholeheartedly and that is the
9 reason we are requesting a change, because of the fact that
10 lower priced product is available in one area and it is com-
11 peting against higher priced product in the other and it is
12 going to erode the high priced level destroying farmers'
13 prices.

14 Q I do not want to appear to be argumentative but I
15 am referring to unpriced milk and you reply is related to
16 milk priced under a market order.

17 My question is, is there milk that is not regulated
18 under a market order going into butter and cheese; which pro-
19 ducts are in competition on a national basis with products
20 made from priced milk?

21 A Yes; however, the majority of that would be manu-
22 factured grade milk in Wisconsin and Minnesota which would be
23 priced at in price related to the Minnesota Wisconsin price.

24 Q Are you aware of the prices paid for the market
25 price of butter and powder within the last month?

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2 market orders that is used for processing butter and powder.

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19 ducts are in competition on a national basis with products
20 made from priced milk?

21 A Yes; however, the majority of that would be manu-
22 factured grade milk in Wisconsin and Minnesota which would be
23 priced at in price related to the Minnesota Wisconsin price.

24 Q Are you aware of the prices paid for the market
25 price of butter and powder within the last month?

1 A With a certain amount of, let's say --
2 Depending on how accurate you want me to determine
3 it, yes, I am aware of the price.

4 Q Would you agree with me that the three five price
5 announced for Minnesota and Wisconsin was \$8.10 for the month
6 of January?

7 A Yes.

8 Q Have you made any computation what the return would
9 be on butter and powder for the same month?

10 A I do not have one before me but I would say it
11 would be something less than seven dollars, depending on
12 possible recent increases that I would not be aware of.

13 Q So, if a plant were making butter and powder and
14 his gross return was seven dollars, it would be difficult for
15 that plant to pay \$8.10 for its milk; would it not?

16 A Under that situation; yes, however, it is even
17 more difficult to see how the price of butter and powder is
18 going to go up when the price of milk is at seven dollars.

19 Q I do not see the analogy but I will not press that
20 further.

21 On another question, in reply to Mr. Morris, you
22 said the import situation, with respect to cheddar cheese and
23 butter, is psychological.

24 Would you say that is also true with respect to
25 powder which is imported?

1 A It would appear that way.

2 Q Would you say that a market was found for vast
3 quantities of powder which came from other sections of the
4 world within the last year?

5 A Yes; and the price of powder continued to go up.

6 Q And that, if more of that were imported, you feel
7 that would have no influence on the price of powder?

8 A It would depend, again, on a number of factors.

9 First of all, how much is going to be imported?
10 What is the current available supply in the domestic market?

11 Secondly, what relationship does the market system
12 make to these imports.

13 All of these are factors that have to be considered
14 before you are simply going to use a general statement and say,
15 imports have an effect. Certain they do, but there are other
16 factors that are just as meaningful in the situation.

17 Q I would assume that your organization does not have
18 an objection to increased imports of these products.

19 A That we do not have an objection to increasing?

20 Q Right.

21 Excuse me.

22 I am basing that on your reply to my last question
23 where you said its effect is minimal, presumably, and, if it
24 is, then I would assume that you have no objection.

25 Is that correct?

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1 A No, sir.

2 MR. COCHRAN: I am going to object to any further
3 questions on import policy.

4 We are not here to determine what import policy
5 is. I think it is totally irrelevant.

6 JUDGE: I am going to sustain the objection at this
7 point.

8 I think you have pursued it far enough with refer-
9 ence to imports and we are not trying to determine whether
10 there should or should not be imports.

11 The witness has indicated what his feeling is with
12 reference to what effect, generally, imports may have. I think
13 we have pursued it far enough, Mr. Hammerman.

14 MR. HAMMERMAN: I will drop that, Your Honor.

15 BY MR. HAMMERMAN:

16 Q Mr. Berkhahn, are you somewhat familiar with the
17 cost of producing milk for the northeast?

18 A Am I familiar with producing milk in the northeast?

19 Q The cost of producing.

20 A Well, my day to day duties do not involve our
21 dairy program in the northeast.

22 Again, my knowledge of what is costs to produce
23 milk would be based on what dairy producers have told myself
24 and other members of my department and also the figures and
25 facts themselves which indicate that producers are going out

1 of business. It should be an obvious indication that it is
2 not profitable for them to stay in dairy production.

3 Q Are you aware of the extent to which dairy plants
4 have gone out of business?

5 A I am.

6 Q Would you agree with me that producers may go out
7 of business for reasons other than the fact that they are not
8 getting enough money for their milk?

9 A Certainly there would be other reasons but I know
10 that, for the most part, a man is in the dairy business be-
11 cause he likes to do it, it is something he knows how to do,
12 and, generally, it is something that has been in his family
13 for a number of years.

14 I think this is a situation that needs to be given
15 serious consideration before we discard it.

16 Q Is that man to whom you refer, if he reaches
17 retirement age and has no one in his family to operate his
18 farm, it is not unlikely that he would just stop producing.

19 Is that correct?

20 A This is correct but another factor would be that,
21 if he had one or more sons or sons-in-law who felt it was
22 profitable for them to produce milk, I am certain they would
23 continue in production.

24 Q And if this farmer located, let us say, within
25 ten miles of the city of Syracuse, New York or Rochester, New

1 of business. It should be an obvious indication that it is
2 not profitable for them to stay in dairy production.

3 Q Are you aware of the extent to which dairy plants
4 have gone out of business?

5 A I am.

6 Q Would you agree with me that producers may go out
7 of business for reasons other than the fact that they are not
8 getting enough money for their milk?

9 A Certainly there would be other reasons but I know
10 that, for the most part, a man is in the dairy business be-
11 cause he likes to do it, it is something he knows how to do,
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17 retirement age and has no one in his family to operate his
18 farm, it is not unlikely that he would just stop producing.

19 Is that correct?

20 A This is correct but another factor would be that,
21 if he had one or more sons or sons-in-law who felt it was
22 profitable for them to produce milk, I am certain they would
23 continue in production.

24 Q And if this farmer located, let us say, within
25 ten miles of the city of Syracuse, New York or Rochester, New

1 York and he had an offer to sell his land for a housing
2 development, that might also be a reason for him to stop
3 farming.

4 Is that correct?

5 A It might also have been the fact that the taxes had
6 increased so much that his cost of production was such that
7 he could no longer continue in production.

8 Q Let's turn to your Exhibit 11, Mr. Berkhahn.

9 You indicate that you have no market for 77 loads
10 of milk per week and have to sell it at a loss.

11 Did you attempt to sell that milk to plants in
12 the States of Minnesota and Wisconsin?

13 A We did.

14 Q And they refused to buy it?

15 A They refused to buy or continue to purchase under
16 the pricing formula that had been in effect.

17 Q Well, if you deducted your premium off of that,
18 the 40 cents, 70 cents and so forth, do you think you could
19 sell it then?

20 A Yes.

21 Q Then why did you sell it for \$1.80 less if you
22 could have sold it for only 40 cents less in Market A?

23 A That is a decision we have to make; whether or
24 not we are going to, let's say, reduce the price 40 cents or
25 whether we are going to try and maintain a bargaining

1 position which is going to provide a higher price level in
2 the area.

3 What I am saying is that it is not a simple matter
4 of determining which market is the most profitable. It also
5 is a factor to determine what effect this is going to have
6 on the overall pricing structure in the Minnesota Wisconsin
7 area.

8 Q So the losses you indicate there really had to do,
9 at least in part, to the fact that your organization made a
10 decision to sell milk for less money.

11 Is that correct?

12 A Yes; however, in some cases, the alternatives that
13 we were able to acquire were the only ones available to us.

14 Q If the plants that are located within the States of
15 Minnesota and Wisconsin were able to buy the milk without the
16 premium, do you think they would have done it?

17 MR. COCHRAN: Are you asking him to project the
18 thinking of somebody else?

19 MR. HAMMERMAN: This is based on the relationship
20 of his organization to these buyers. Presumably, the witness
21 is aware of the relationship and the market conditions that
22 prompted these decisions.

23 That is all I am asking him about.

24 THE WITNESS: The best way I can answer that is --

25 MR. WILES: Judge, I wonder if I could ask a

1 question of clarification

2 Mr. Harrison uses the word "premium" all the time
3 and I wonder if he would indulge me to tell us what he means
4 by the word "premium".

5 MR. HARRISON: I will be glad to.

6 JUDGE: Just a minute, gentlemen.

7 I want to attempt to keep this hearing running
8 smoothly with the number of participants.

9 If counsel, while questioning, is going to be sub-
10 jected to questions from other counsel or participants, we
11 will get on chaotic conditions.

12 You will address your direct and your remarks
13 either by raising an objection or asking for clarification
14 which, of course, you will say clearly out before an objection
15 is given. Let me put the question to you that if we are asked
16 so that we will not get into a situation where we will be
17 having one or three or four people talking at the same time.

18 Now, Mr. Harrison, if you can tell us in a very
19 few words, and I think with this audience, all of them know
20 what premium means but, in order to get this on the record --
21 if you can tell us in about ten words, what was meant by
22 "premium", I think we can then go on with the hearing.

23 MR. HARRISON: I will try to do it in fewer
24 words, Your Honor.

25 By "premium", I mean the plus amount appearing

1 after MW in the price column.

2 JUDGE: Thank you.

3 I think that was nine.

4 Let's proceed, gentlemen.

5 BY MR. HAMMERMAN:

6 Q Mr. Berkahn, are you familiar with the name
7 ^{Graf} Truman Raff?

8 A Yes, I am.

9 Q Do you know what his position is?

10 MR. COCHRAN: Your Honor, I would like to know
11 where we are going.

12 Mr. Truman Raff is not here.

13 What is the basis for going into that?

14 He might ask him if he knows the name of John
15 Smith.

16 JUDGE: What is the purpose, Mr. Hammerman?

17 MR. HAMMERMAN: Truman Raff is widely known in the
18 industry as an expert on Minnesota Wisconsin price ceilings.

19 MR. COCHRAN: I do not know that I accept that,
20 Your Honor. That could be his statement.

21 MR. HAMMERMAN: Well, the witness, on his own
22 initiative, quoted one Glen Lake and, since the witness has,
23 in reply to my question, stated that the name Truman Raff is
24 also familiar to him, I want to get the witness' opinion of a
25 statement made by this Mr. Raff.

1 MR. COCHRAN: If Your Honor please, I object to
2 this.

3 This statement may be taken out of context from
4 a dissertation ten pages long.

5 If this gentleman wants to add some credence to
6 what Mr. Raff said, bring Mr. Raff in.

7 JUDGE: I think there is a reasonable ground for
8 objecting to simply asking a witness who somebody else is and
9 what he thinks of what they may have said.

10 If you recall, Mr. Hammerman, that Mr. Raff has said
11 something that is more significant than what Mr. Lake said,
12 you are free to come up and testify and put it into the record.
13 But, I think we are really watching time here by the type of
14 questions that are being asked.

15 I do not think it adds anything to the record for
16 the Secretary's consideration to know what Mr. Berkhahn thinks
17 of Mr. Raff or what Mr. Raff may have said.

18 MR. HAMMERMAN: All right.

19 Without making reference to any particular individual,
20 your Honor, I want to give a brief statement to the witness
21 and ask him if he agrees with it.

22 May I now?

23 JUDGE: Surely. You may give a statement and ask him
24 if he agrees with it.

25 MR. HAMMERMAN: This is the statement: "The time

1 will come, in the near future; certainly in the next five
2 years, when this will no longer be true because the percentage
3 of Grade B milk that is produced in these two states will be
4 too low."

5 MR. COCHRAN: Your Honor, I do not know what this
6 means. He said, this will be true.

7 MR. HAMMERMAN: Let me start one further sentence
8 and give you a somewhat clearer statement.

9 "In 1972, 67 per cent of Minnesota's . . ." --

10 MR. COCHRAN: Your Honor, I am not going to accept
11 as evidence something that Mr. Hammerman reads out of a book
12 that somebody else said.

13 JUDGE: Just a moment, Mr. Cochran.

14 What is accepted as evidence I will have to rule
15 on.

16 MR. COCHRAN: Yes, sir. I just state my position.

17 JUDGE: Mr. Hammerman, you may read the statement.
18 You may ask the witness if he agrees with it and then let's
19 get on to something else.

20 We are not going into detail on why he does not
21 agree, if he does not, or why he does, if he does.

22 MR. COCHRAN: My only point, Your Honor, is this:
23 I am going to object --

24 JUDGE: I understand. Your objection is on the
25 record and I have overruled it.

1 Let him ask him the question.

2 MR. HAMMERMAN: "In 1972, 67 per cent of Minnesota's
3 and 43 per cent of Wisconsin's milk was Grade B and Minnesota
4 Wisconsin price was a good measure of a competitive manufact-
5 uring milk price.

6 "The time will come in the near future, certainly
7 in the next five years, when this will no longer be true be-
8 cause the percentage of Grade B milk that is produced in these
9 two states will be too low."

10 BY MR. HAMMERMAN:

11 Q Do you agree with that statement?

12 MR. COCHRAN: Your Honor, I hate to object again
13 but I think I should make this observation.

14 Perhaps he should break this down into maybe ten
15 or 12 questions. He may ask him, does he agree that a certain
16 percentage of the milk in Minnesota and Wisconsin went into
17 certain uses. I do not know whether he can agree to that or
18 not.

19 But, what you are doing, he is attempting to make
20 Mr. Berkhahn dignify some figures here that somebody else
21 used.

22 MR. HAMMERMAN: May I be heard.

23 JUDGE: I think the witness is capable of saying
24 whether he agrees or disagrees or does not care to answer or
25 anything else he wants to say about it.

1 I permitted the question and now I will permit the
2 answer.

3 The objection is overruled.

4 You may answer, Mr. Berkham.

5 THE WITNESS: No.

6 MR. HAMMERMAN: We will go on from there.

7 Are you somewhat acquainted with the available
8 facilities for the use of milk for manufacture in plants that
9 are covered by market orders?

10 MR. COCHRAN: In what area, please, if I may?

11 MR. HAMMERMAN: I wanted to give the witness an
12 opportunity to answer it generally.

13 I will be more specific.

14 BY MR. HAMMERMAN:

15 Q Are you aware of the availability in the manu-
16 facturing plant in the New York milk shed?

17 A Somewhat. Slightly would be the more accurate answer
18 to that.

19 Q Are you aware of what would happen if the manu-
20 facturers of butter and powder found it unprofitable to handle
21 that product; what would happen to the milk in that milk shed?

22 A You are asking me to make a statement that I do
23 not know it would be necessary to make.

24 As I said earlier, we find it hard to accept the
25 fact that the market system operates the way it does. I think

1 processors of product need to and are going to have to make
2 a profit on the product they are handling.

3 Q But you do not know whether they can make a pro-
4 fit by making the products I mentioned, if their basic
5 cost was based on Minnesota Wisconsin.

6 Is that correct?

7 A I do not agree with that. It depends on what they
8 sell the product for.

9 Q In the illustration that you yourself gave me where
10 the return for butter and powder was seven dollars and the
11 Minnesota Wisconsin was eight ten, under those conditions,
12 would any handler be handling that milk?

13 A I envision that what would happen is that they
14 would reflect the cost of milk into the price of products,
15 like any good businessman should.

16 Q And do you think the handler, under Order Two,
17 could raise the price of butter and powder to the point where
18 it would return him a sufficient amount of money to cover his
19 cost and a profit?

20 A As I said, I was not very well acquainted with the
21 Order Two manufacturing plants but I believe they are just
22 as efficient and just as well managed and run as manufacturing
23 plants anywhere else in the United States and I would think
24 they could; yes.

25 Q Let us take the manufacturing plants in Minnesota

1 and Wisconsin who are now making butter and powder.

2 Do you think that they can profitably manufacture
3 those products and return the \$8.10 which was the average
4 Minnesota Wisconsin price?

5 A No, they cannot, at the present time.

6 Q What would happen to those plants?

7 A I would guess that this is the reason that we had
8 that hearing; to alleviate that problem that they had by be-
9 ing affected from a low price area which is depressing the
10 price they are receiving for product.

11 Q Is this the hearing?

12 A Yes.

13 Q Is it your opinion that, as a result of this hear-
14 ing, the price in the marketplace for butter and powder would
15 be materially higher; in fact, higher to the extent that then
16 they can get a return of better than \$8.10?

17 Is that correct?

18 A If this is the level that the Minnesota Wisconsin
19 series was arrived at, yes.

20 Q Can you say why an ice cream manufacturer, for
21 example, would want to use product that is produced in a
22 market order plant when he can buy butter -- either imported
23 butter or bought butter -- from an unregulated plant at a
24 lower price?

25 A I said before that I recognize that imports are a

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1 factor but that there are other factors that are just as much
2 involved and just as significant in the total picture as just
3 simply saying, well, imports are available at a lower price.

4 They always will be, in all probability, until we
5 become dependent on a foreign supply. I will imagine, at that
6 point, they will be businessmen like we should have been.

7 Q And if they are businessmen, you will agree with
8 me that the user of dairy products -- and I am giving ice
9 cream as an illustration only -- would buy his product where
10 he can get it cheapest; is that correct?

11 A To a question like that, I would have to say yes,
12 I imagine this would be the case.

13 MR. HAMMERMAN: Thank you very much.

14 That is all I have.

15 JUDGE: Gentlemen, this is a good point to take
16 a ten minute recess.

17 Whereupon,

18 The hearing was recessed for a short period.
19
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1 JUDGE MCALPIN: Gentlemen, please be seated. The
2 hearing is again in order and on the record. Are there further
3 questions now of Mr. Berkhahn?

4 MR. WILES: If there are no other questions, I
5 would like to have the opportunity to ask a couple of
6 questions with respect to Mr. Hammerman's cross-examination.

7 JUDGE MCALPIN: Just a moment.

8 MR. FLOUNDERS: If I can come later, I will wait.

9 JUDGE MCALPIN: All right, sir. Mr. Wiles.

10 BY MR. WILES:

11 Q Mr. Berkhahn, Mr. Hammerman asked you a series of
12 questions related to Exhibit 11, wherein he referred to the
13 40 cents and 35 cents and so on which are the plus items under
14 the price column as premiums.

15 I asked Mr. Hammerman what he meant by premiums and
16 I would like to ask you what you mean by it.

17 A I am not sure I used the word premium, but I will
18 define what this means here.

19 The M.W. plus 40 cents is what Buyer A paid for milk
20 purchased from NFO delivered into his plant, all services and
21 transportation paid.

22 All he needed to do was make money out of it.

23 Q If you were my witness, I would say just answer the
24 question. Then, when you described premium to me, you are
25 describing or attempting to include in the 40 cents, for

/pat

1 example, above the M.W. price --

2 MR. COCHRAN: Objection, Your Honor, from the
3 standpoint he is misquoting the witness. The witness said, "I
4 did not use the word premium. I am explaining to you what the
5 figures on the price means."

6 He did not say what was a premium and what was not a
7 premium.

8 MR. WILES: I will urge, Mr. Cochran, that we are
9 not in argument on this point. I am trying to clarify it for
10 the record.

11 JUDGE MCALPIN: Gentlemen, if you will not argue
12 back and forth. I am going to sustain the objection on the
13 ground that the question was not -- I cannot say responsive
14 to the answer, but the answer did not use the term premium
15 and the question does imply that he did.

16 MR. WILES: I do not mean to imply that, Judge. I
17 mean to elicit from the witness what factors NFO used in
18 arriving at a plus 40 cents without the use of the word
19 premium at all, because to me it is onerous.

20 THE WITNESS: As I said, this is a figure that was
21 arrived at through negotiation. The amount that was sought
22 and the amount that was attained was in relationship to
23 market costs in supplying that market.

24 There may have been a transportation factor involved
25 plus the NFO performs all the field services, check writing

/pat

1 and various things for its producers, which we incur costs
2 in doing.

3 BY MR. WILES:

4 Q The 40 cents then in the first line across was
5 intended to include the cost to NFO of those services that
6 you have just described, check writing, field work, quality
7 control and this type of thing.

8 A Yes.

9 Q It was not intended to be, in its entirety at least,
10 a premium over and above what your costs were of laying milk
11 down to the handler.

12 A No, sir. It was not.

13 MR. WILES: Judge, at the recess at the noon, there
14 was circulated in the room a release from the United States
15 Department of Agriculture dealing with this general subject.

16 I would like to have this record take official
17 notice of its contents in its entirety.

18 JUDGE MCALPIN: I want to be consistent, Mr. Wiles.
19 I just recently came off a milk hearing in Texas where I would
20 not admit or take official notice of news releases based on
21 the fact that we do not know whether it is published and we
22 do not know the source of the information.

23 I will have no objection, however, to taking official
24 notice of the decision to which this news release refers, but
25 not the news release.

1 I say that based on the fact that as I stated in
2 Texas, that I spent 23 years in journalism and I do not think
3 news releases are good evidence.

4 MR. MORRIS: May we then, supplementing Mr. Wiles'
5 request, ask that you take official notice of the final
6 decision in the proceedings, if my recollection are correct
7 under AO-360-A6 regarding 39 milk orders which were leased
8 and became known to us in the hearing as of noon today,
9 February 20.

10 JUDGE MCALPIN: Your question is certainly germane,
11 Mr. Morris, and let the record show that official notice
12 will be taken of the decision.

13 MR. WILES: Let the record show that I am thankful
14 Mr. Morris is here. That is all. Thank you, sir.

15 JUDGE MCALPIN: Are there further questions?

16 MR. COCHRAN: If Your Honor please, if I understand
17 correctly, we are taking official notice of the decision in
18 its entirety with respect to those 39 milk orders. Is that
19 correct?

20 JUDGE MCALPIN: Right.

21 MR. COCHRAN: Of course, that will include the
22 decision, whatever it is, as it relates to each one of those
23 39 orders. Thank you, sir.

24 MR. PALMER: Sir, for further clarification, I
25 believe there are two decisions; one decision with respect to

seven order and another with respect to 22, and I believe
that is what the intent is.

JUDGE MCALPIN: To clarify it on the record, what
we are talking about is official notice of the decisions on
uniform classing and pricing plans for 39 milk orders.

Any further questions? Yes, sir.

MR. HROMCO: My name is Lane Hromco. I previously
made my appearance.

BY MR. HROMCO:

Q Mr. Berkhahn, you stated in entering some figures
that the milk production was declining and in the months of
October and November and December of 1973 the production was
52 million pounds less than in the preceding year.

Could you relate that to a percentage of reduction?

A I would not be able to do that without taking
some time to compute the actual reduction insofar as that
one particular order is concerned.

The only thing that I could offer in answer to
that is that I have seen figures which report January of
'74 is three percent below January of '73, which indicates
a continuous decline in production.

Q Referring to that same category, do you have any
figures relative to the decline of milk consumption during
that same period of time?

A I do not have anything in front of me. I believe

1 in research in preparation for this I did notice something in
2 some of the publications that there was a reduction in
3 per capita consumption.

4 Q Do you have any percentage figure on that?

5 A Not without looking for it.

6 Q Could you get it or give an opinion?

7 A No, sir. Well, if you ask me for an opinion, I
8 would say it was small.

9 Q Close to three percent?

10 A I do not know.

11 Q If the reduction in consumption was three percent
12 and the reduction in production was three percent, relatively
13 speaking you would have no shortage of milk, Would you
14 agree with that?

15 A I am not going to agree without having some time
16 to think about it. I have not given any thought to it.
17 I do not know that consumption is down three percent.

18 Again, it would depend on what production and what
19 consumption you are basing this on.

20 Q Well, we do not have the figures, neither you nor
21 myself relative to the same market covering the same period
22 of time, but would you agree that the acuteness of the
23 shortage would not be three percent, as you figures seem to
24 state, but it would be somewhat less than three percent
25 because consumption is down somewhat.

pat 1 A Certainly if consumption is down, you have some-
2 what less need for production. To that extent, yes, I would
3 agree with you, but again I, in no way, am saying that I agree
4 with your basic line of questioning, because I have not had
5 any opportunity to research that at all at this time.

6 MR. HROMCO: Thank you.

7 MR. FLOUNDERS: Mr. Berkahn, are you aware of the
8 amount, the difference in price between the Minnesota-
9 Wisconsin price and the Butter-Powder formula price for the
10 month of January.

11 THE WITNESS: I am not aware of it for the month
12 of January, no.

13 BY MR. FLOUNDERS:

14 Q Was it more than \$1.20?

15 A I do not know.

16 Q Does \$1.40 alternative that you have here under the
17 column headed "alternatives" indicate that your alternative
18 sale was at a price below the butter-powder formula price?

19 A Yes. It would have been below that.

20 Q It was below the butter-powder formula. Can you
21 tell us what kind of a business it was in or what products
22 it was for?

23 A That sale, as best I can recall, was made to a
24 butter-butter plant.

25 Q And what you saying is in this situation, the NFO

1 was unable to secure the price equivalent of butter-powder.

2 A As far as comparing that to the butter-powder formula
3 in this order, again I have to take a look at it.

4 But, that would have been a price reflecting \$6.70.

5 Q In your exhibit, I did not have the exact number
6 here, where you show the impact on producer returns for one
7 market, for example, the Boston market, the impact upon
8 producer returns; if the butter-powder snubber was removed,
9 do you have that exhibit number -- Exhibit Ten, I am told.

10 The difference of 38 cents assumes that all of the
11 product was sold or that the market was clear that the
12 prices were recommending, does it not?

13 A It means that the blend price would have been 38
14 cents higher.

15 Q Does it assume that all of the milk of producers
16 was sold?

17 A Yes.

18 Q How can you make that assumption, that producers
19 would be successful in selling all of their milk at the
20 Minnesota-Wisconsin series when you are not even able, in some
21 situations, to sell all of your milk at the butter-powder
22 series.

23 A That is the reason we requested this hearing. Be-
24 cause we could see the effect that the production in this
25 area was having on the Minnesota-Wisconsin series.

9/pst

1 We feel the the suspension of the butter-powder
2 formula here will have a great degree of effect on the
3 price of product, namely butter-powder, and result in effect
4 on what happens to the Minnesota-Wisconsin series in the months
5 ahead.

6 Q Is the Minnesota-Wisconsin series a series for grade
7 B milk?

8 A Yes.

9 Q Are you saying the reason for your recommendation,
10 one of the reasons is that you wanted to take the butter-powder
11 snubber out of Federal Orders in order to prop up the price
12 for Grade B milk?

13 A No, sir.

14 Q Is that not what you just said?

15 A In our statement, we said that our concern was
16 twofold, one the obvious loss in income in these orders as the
17 r-sult of the drop, due to a drop in the values of butter in
18 powder.

19 But, equally or of even greater concern was the
20 effect that we saw this was going to have on the Minnesota-
21 Wisconsin series price.

22 Following it through, if the Minnesota-Wisconsin
23 series was eroded because of the effect of the low price
24 product from these orders, it would result in the drastic
25 reduction of milk prices in every Federally regulated order in

0/pat

1 the United States.

2 Q Then, by the word "eroded" that you just used, you
3 mean the Minnesota-Wisconsin series price reduced. Is that
4 your meaning of the word "eroded"?

5 A Yes, sir.

6 Q Now, sir, did I assume correctly from your answers
7 to Mr. Morris that in your Exhibit 11, is all of that milk
8 from one plant?

9 A I am sorry. I am not sure I followed the question.

10 Q Is all of the milk referred to in the first column
11 headed "Loads Per Week", is all of those 77 loads from a
12 single plant?

13 A No, sir.

14 Q It is all from different plants?

15 A Yes. There are nine separate markets that were
16 affected or that were involved in the 77 loads of milk.

17 Q And all of the markets -- wait a minute. I am
18 confused now.

19 You just said that all of the markets to which the
20 milk was moving, there were nine different markets to which it
21 was moving. Is that correct?

22 A NFO sells milk to several hundred different markets.
23 It happened to be that we lost the seven markets because of
24 lower price milk being made available to them.

25 The result was that we had to move 77 loads of milk

1 per week into alternative markets which normally had been
2 going to seven different buyers of milk.

3 Q Were any of these buyers of milk regulated by
4 Federal Order?

5 A An accurate answer to that is yes. Some of these
6 did have a Grade A intake where they had a regulated Grade A
7 supply of milk.

8 However, all of these plants also had non-regulated
9 status as far as their utilization of Class XI and manufactured
10 milk was concerned.

11 Q Let me ask it this way. Was all of this milk Grade
12 B milk in this case?

13 A No, sir.

14 Q Were the alternative markets Grade A plants or Grade
15 B plants?

16 A The alternative markets would have been processing
17 plants making butter, powder and cheese and in this case, they
18 would have been unregulated, although again, some of them
19 might have had a regulated supply of milk qualified under
20 Federal Orders.

21 Q So, when you speak here -- let me ask you one
22 other question. Do you know the alternative supplies of milk
23 that resulted in your losing these markets?

24 A Do I know who these alternative suppliers were?

25 Q Yes.

2/pat

1 A In some cases, yes. Again, I am one step or two
2 steps, as the case might be, removed from the day-to-day
3 operation.

4 But, I would know at least to some degree what some
5 of these other suppliers were.

6 Q To the extent that you know and only to the extent
7 that you know, were any of these alternative suppliers Grade A
8 plants -- Federally regulated plants?

9 A I do know that some of these people did have milk
10 regulated under Federal Orders. I also know that in that
11 part of the country they have 50, 60 percent of their total
12 supply as a manufactured grade of milk.

13 I really do not know whether or not their sale was
14 made with manufactured milk or whether it was made with
15 Class II grade A milk.

16 Q Then, in your statement where you refer to Exhibit
17 11, where you use the words "illustrating the effect that
18 this condition is already having on milk prices in this
19 Minnesota-Wisconsin area," I take it there that you are
20 referring -- I take it that you have no way of implying or
21 knowing that the situation that Exhibit 11 refers to is that
22 result of milk from Federal Order markets having a butter-
23 powder snubber.

24 A Yes. We feel it is affected by it, butter-powder
25 snubber formulas.

13/pat

1 Q I said do you know?

2 A Do I know whether the supplies of milk that were
3 sold that resulted in us losing this were from plants that
4 were regulated under butter-powder snubbers?

5 Q That is correct.

6 A Yes. In one particular case, I do know that they
7 were.

8 Q And then you do know about one case?

9 A Yes.

10 Q Which one was it?

11 A These were sales that were made by a handler
12 regulated under Order 1069.

13 Q Where is that located?

14 A Duluth-Superior.

15 Q Which one of these under column headed "Markets A
16 through I was it?

17 A I do not know. By that I mean I do not have that
18 information with me.

19 Q You refer on page three of your statement to the
20 fact that the gross dairy income rose about ten percent in
21 1973.

22 I believe your answer to Mr. Morris was that you
23 were not too sure where you got this and I will not pry into
24 where you got it.

25 I just want to ask you, do you have any idea what

14/pat

1 that percent refers to?

2 Is that an annual increase for the year? Is it for
3 the month of December as compared with December or is it for a
4 particular area or is it for the entire United States or what?

5 A I can help you thanks to the fact that we have found
6 this. It is on page three of the bulletin that I quoted
7 earlier, the second column, second sentence in the paragraph.

8 It says, "Gross dairy incomes were up ten percent in
9 January to October. Meanwhile prices paid by farmers for
10 production items increased about 20 percent."

11 Q Would you repeat that?

12 A Repeat the statement?

13 Q Yes.

14 A It says, "Gross dairy incomes were up some ten percent
15 in January to October. Meanwhile prices paid by farmers for
16 production items increased about 20 percent."

17 Q All right. Are you aware of how much the Minnesota-
18 Wisconsin price series has increased from December 1972 to
19 December 1973?

20 A I would have to look to give you an accurate figure,
21 but as we stated in our statement, it has gone up considerably.

22 Q Would you accept the figure of between 45 and 50
23 percent?

24 MR. COCHRAN: Forty-five or Fifty percent or cents?

25 MR. FLOUNDERS: Percent increase.

5/pat

1

THE WITNESS: I do not know. I would have to figure

2

it out.

3

BY MR. FLOUNDERS:

4

Q I assume that your answer so far as the blend price increase from December 1972 to December 1973 in each of the Federal Order market in this hearing would be the same, that you do not know really.

8

A Well, I do not know, except that I would agree they have gone up.

10

Q Would you agree in every case, it was up substantially more than ten percent from the month of December to December?

12

A I would have to compute it, but it would have gone up in the same relationship as the Minnesota-Wisconsin series, at least until October.

15

Q In other words, at this point, you do not know.

16

A I do not know.

17

Q In answer to a question of Mr. Morris, you said that you felt that all prices in a Federal Order should contribute to producer income. Is that correct?

20

A Yes.

21

Q Do you mean percentagewise or actual dollarwise or just how do you mean that?

22

23

A I would say that we make that statement primarily in reference to the fact that there seemed to have been, at least in the past, constant, or at least repeated attention

24

25

given to Class I prices.

We have always felt that all prices should be in a position where they contribute equitably. I do not know that we ever sat down and determined at what level, and what price relationship there should be between the various products.

Q When you make the statement that there should be an increase in the manufacturing prices under these order, you are making that statement then without any actual knowledge of whether or not the manufacturing prices under the orders here in question have in the past year increased as much as the Class I prices on a percentage basis.

Is that true?

A I am not sure that I know how to answer that question. As I said, the basis for our request for this hearing was twofold; to restore the loss in price since October in these orders and also to eliminate what effect these orders and this provision in these orders would have on the Minnesota-Wisconsin series.

That is the reason we requested this hearing.

Q Sir, if I can help you, I would say it seems to me the answer to the question is either you did know how much the manufacturing milk had contributed to increased producer returns on a percentage basis when you made the statement or you did not know. It is very simple and I am just simply

17/pat 1 asking. You know it or you did not know it.

2 MR. COCHRAN: Objection, Your Honor. That is
3 plain, pure argument on the part of counsel.

4 JUDGE MCALPIN: I will sustain the objection as
5 being argumentative. The question has been answered and is
6 now on record.

7 MR. FLOUNDERS: I will ask the question again, if I
8 may, and I hope I am not being repetitive. I do not intend
9 to, Your Honor.

10 BY MR. FLOUNDERS:

11 Q I just aksed you, sir, when you prepared your
12 statement, did you know to what extent the increases in
13 manufacturing prices in the orders in question in the past
14 twelve months has contributed to increases in producer
15 returns relative to increases in Class I?

16 A We did not actually calculate it up.

17 Q Thank you, sir. Now, when you gave your back-
18 ground to Mr. Morris, if I might just stress a little
19 further. I do not mean to go very far.

20 Have you ever worked for any company processing
21 manufactured dairy products?

22 A No, sir.

23 Q Have you ever marketed any manufactured dairy
24 products?

25 A As a producer, I did.

1 Q I said manufactured dairy products.

2 A Oh, no, sir.

3 Q Then, what is your basis of knowledge for your
4 assumption that dealers will be able to sell whatever
5 products they manufacture or are able to manufacture at the
6 classified prices that you are recommending?

7 A I would say in observation of other segments of
8 the economy that operate very successfully and profitably
9 that way, by taking the input costs, reflecting it through
10 into the market.

11 Q To whatever extent this was not possible and the
12 operator that we are referring to was an operating
13 cooperative, then any assumption of yours on the amounts
14 that the producer returns, actual producer income, would be
15 enhanced, would have to be corrected. Is that correct?

16 MR. COCHRAN: Your Honor, please. That question
17 is so hypothetical. He is assuming that if he is wrong, he
18 is wrong.

19 MR. FLOUNDERS: I will change it if you like.
20 Your Honor.

21 JUDGE MCALPIN: If the witness can answer, let him
22 answer. The objection is overruled.

23 THE WITNESS: I am sorry if I am not responsive
24 to some of your questions here, but I really am having a
25 difficult job following those questions.

/pat

1 MR. COCHRAN: Could I suggest that you repeat
2 or rephrase the question? May I ask that, Your Honor?

3 MR. FLOUNDERS: I would be very glad to.

4 THE WITNESS: Would you please?

5 BY MR. FLOUNDERS:

6 Q Are you aware of the extent to which butter-powder
7 operations in the northeastern markets are in the hands of
8 operating cooperatives?

9 A I know that in the northeast and in the midwest
10 that the majority of the butter-powder plants are operated
11 by cooperatives.

12 Q All right. Then, with your knowledge that butter-
13 powder plants in this market are run by operating co-ops,
14 if those operating co-ops were not able to sell their butter-
15 powder at a price that would return to them the Minnesota-
16 Wisconsin cost price, then your assumption on Exhibit Ten
17 would have to be adjusted. Is that not true? By adjusted,
18 I mean downward.

19 A Well, the figures used here would be Federal Order
20 blend prices. They are not intended to show the prices
21 paid by a cooperative handler. They are Federal Order
22 prices.

23 Q But if the operating cooperative loses money, the
24 members of that cooperative do not necessarily get Federal
25 Order blend prices, do they?

1 A This is the rights the cooperative has in this.

2 Q What do you mean in the last paragraph of your
3 statement when you refer to the questionable health standards
4 under which these products are produced and your statement
5 "these products", I assume refer to imported dairy manufactur-
6 ing products.

7 A That is what I was referring to.

8 The reference I was using here was the fact that
9 this has been well publicized, that the foreign dairy
10 products are produced in some cases in substandard health
11 conditions.

12 Q Do you have any actual knowledge of the quality of
13 the imported products?

14 A I have been advised by an NFO member's wife who
15 was working in the cheese processing facility in Green Bay,
16 Wisconsin, that was handling imported cheese. She advised
17 us as to the condition of that cheese.

18 Q This is the entire basis of your knowledge with
19 the statement.

20 A My direct knowledge, yes.

21 MR. FLOUNDERS: Thank you very much. That is all,
22 sir.

23 JUDGE MCALPIN: Further questions?

24 MR. COCHRAN: Your Honor, if I could just make one
25 little clarification that I think might be helpful at this

1 time.

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2 JUDGE MCALPIN: Alright, Mr. Cochran.

3 MR. COCHRAN: You had some discussion with Mr.
4 Flounders about a ten percent increase in milk price and a
5 twenty percent increase in cost of production. Is that
6 correct generally?

7 THE WITNESS: Yes.

8 MR. COCHRAN: What I would like to do, if you would
9 identify the document from which you read that statement. If
10 you would look at the cover page and identify that document.

11 THE WITNESS: It is a government publication
12 entitled, "Dairy Situation" BS 348 dated November '73 put out
13 by the Economic Research Service of the United States Depart-
14 ment of Agriculture.

15 The reference appears on page three.

16 MR. COCHRAN: Only one other item, sir, if I under-
17 stood correctly one of Mr. Flounders questions. I believe he
18 asked the witness if all of the NFO milk contained in the 77
19 loads per week on Exhibit 11 originated from one plant.

20 That is the way I understood the question and I think
21 he said yes. Now, is that correct?

22 THE WITNESS: No. I did not say yes. If they
23 originated from one plant, no, they certainly would not have
24 They originated from hundreds of our producers.

25 We were either delivering directly into plants or

2/pat

1 through relay stations.

2 MR. COCHRAN: That is all I have right now, sir.

3 MR. MORRIS: Sir, I have a question which is directly
4 relative to a topic just covered by Mr. Cochran. I believe
5 it would be expeditious for the record if I could cover it
6 right now.

7 JUDGE MCALPIN: Alright, Mr. Morris.

8 BY MR. MORRIS:

9 Q Mr. Barkhahn, you have indicated that your figures
10 of ten percent gross dairy income increase and 20 percent
11 production item increase were derived from page three of
12 "Dairy Situation" for November 1973, have you not?

13 A Yes.

14 Q That page is headed "Summary", is it not?

15 A Yes.

16 Q You would, therefore, expect to find the figures
17 somewhat more carefully elucidated elsewhere in the report,
18 might you not?

19 A Possibly.

20 Q Would you turn to page 11. Do you see on page 11 in
21 the right-hand column the heading "Dairy Farmers Gross More
22 Income"? May I read that to you for the record?

23 "Gross receipts for the sale of milk and cream
24 January to October total 6.6 billion, up around ten percent
25 from the same months last year. Higher prices pushed up gross

23/pat

1 dairy income despite a drop in farmers milk marketings. Gains
2 in cash receipts during the rest of the year will likely push
3 the 1973 total to around eight billion, up from 7.2 billion
4 last year", referring to a table.

5 "While gross dairy incomes rose about ten percent
6 in January-October, prices paid by farmers for production
7 items went up a fifth from a year ago."

8 Do I quote accurately?

9 A You do.

10 Q In analyzing that then to truly understand the
11 statistics, we cannot compare the ten percent with the 20
12 percent, can we, because, first of all, it was on less
13 marketings?

14 A I think the comparison is very accurate.

15 Q I will let the text stand for itself. Second of
16 all, it is only through October, is it not, as far as the
17 income depreciation is concerned?

18 A That is correct.

19 Q Are you aware that the greatest income appreciation
20 or a greater part of it took place from October to November
21 1973?

22 A The greatest income?

23 Q Yes. Appreciation.

24 A Possibly, but I do not know that it did.

25 Q We will let the statistics which I am sure this
record will reflect speak to that.

1 Lastly, if production items rose as indicated in
2 the text on page eleven by 20 percent over the year and
3 dairy income rose by a gross ten percent during the year,
4 dairy income from the first of the year to the last of the
5 year by comparison and by the figures actually reflected in
6 the text would have to be more than ten percent, would it
7 not?

8 A I assume they will continue to go up during the
9 last three months of the year.

10 Q No, sir. It is assuming stopping in October, that
11 it was up ten percent gross for the year in order to make
12 that ten percent and assuming that it arose either on a
13 curve or linearly, it would have to have risen substantially
14 more than ten percent by the end of the year over the
15 beginning of the year, would it not?

16 A I do not know. I do not agree with you on that.

17 MR. MORRIS: That is all on that topic, sir.

18 MR. WILES: Your Honor, with respect to the dialogue
19 that has just been held, I would inquire if official notice
20 has been taken of the publication.

21 I notice that it was identified, but I did not know
22 if official notice was taken.

23 JUDGE MCALPIN: The request is honored and official
24 notice will be taken of the publication from which the
25 quotations have been made, particularly the sections that

25/pat

1 have been quoted. Mr. Smith.

2 BY MR. SMITH:

3 Q Back on page four of your statement, you refer to
4 a drop of 16 cents per pound of butter in the first week of
5 October 1973.

6 Can you tell me what happened to the Minnesota-
7 Wisconsin price, ^{3.5}55 percent butterfat, between September and
8 October 1973?

9 A It increased.

10 Q According to my figures, it increased 58 cents. Is
11 that your recollection?

12 A That possibly is right. I would have to look back
13 and I have not been able to keep track of it lately.

14 Q On the next page, page five, you have another
15 reference to a drop in the butter price of 23 cents. You say
16 since the first of October.

17 In connection with that, what happened to the
18 Minnesota-Wisconsin price between October and November?

19 A It increased.

20 Q What happened to the Minnesota-Wisconsin price
21 between November and December?

22 A It increased.

23 Q What happened to it between December and January?

24 A It increased.

25 Q In other words, it has increased every month from

at

1 last September?

2 A Yes, sir.

3 Q And it is within that period of four months that
4 you cite certain decreases in the price of butter.

5 A Yes. As I said, prior to that the formulas were
6 in relative balance.

7 Q I am not referring to prior to that. I am referring
8 to butter, Minnesota-Wisconsin price relationship, going back
9 only to last September or starting in September from the
10 month before. You started citing drops in the price of
11 butter.

12 My question here is, in view of this steady increase
13 in the Minnesota-Wisconsin price since last September, at a
14 time when butter prices have decreased substantially, as you
15 point out, is it not true that those drops in the price of
16 butter or the use of the butter-powder snubber in certain
17 orders has not stopped the Minnesota-Wisconsin price from
18 increasing during that period of time. Is that not true?

19 A This is correct.

20 However, what degree it affected its increase is
21 a matter of determination.

22 Q Back on your Exhibit 11, I do not think this has
23 been asked. The NFO producers, the suppliers in producing this
24 milk, do they pay the cost of hauling from farm to the first
25 point of delivery?

1 A They do.

2 Q I think you referred to, in response to one question
3 through Mr. Hammerman, that NFO sells milk in hundreds of
4 markets.

5 A Yes, sir.

6 Q Are these nine in exhibit 11 the only ones where
7 you had this loss of market in the manner in which you describe
8 and show in Exhibit 11?

9 A We operate with what we define as certain unit
10 areas. We have areas centralized as far as accounting
11 purposes and administrative and other procedures are con-
12 cerned.

13 The data that we have here is from one such unit.
14 This did represent the total loss of markets for that one
15 unit.

16 But, as I said in our statement, we have knowledge
17 that this is existing in other areas as well.

18 Q Could you indicate where this particular unit is
19 located, generally speaking?

20 A Midwest.

21 Q In reference to that, where are your other units
22 located?

23 A We have units located from the northeast to as
24 far west as Oregon, Utah and Idaho.

25 Q Would you care to state how many units you have?

/pat 1 MR. COCHRAN: If I may make an observation, when
2 you get to the point you think you are in confidential
3 information, I do not know when you will get there, I wish
4 to instruct you that you do not have to reveal confidential
5 information.

6 THE WITNESS: I do not know that I can give you
7 that figure with complete accuracy, but I would say it would
8 be in the neighborhood of a dozen or more.

9 MR. WILES: One question, Your Honor, in the same
10 vein.

11 JUDGE MCALPIN: Mr. Wiles.

12 BY MR. WILES:

13 Q I am a little confused about the term markets. When
14 you alleged hundreds of markets, do you mean in each instance
15 that that is the sum total of individual buying handlers?

16 A I am sorry.

17 Q What is a market?

18 A A market is someone who buys milk and accounts for
19 it to NFO.

20 Q A market is one person or organization or corpora-
21 tion who buys milk.

22 A Yes.

23 Q As distinguished from a marketplace or a market in
24 the sense that New York City would be a market.

25 A Perhaps it would be better to regard that as buyer

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1 rather than market.

2 JUDGE MCALPIN: Any further questions, gentlemen?
3 Mr. Aldridge.

4 MR. ALDRIDGE: Thank you, Judge.

5 BY MR. ALDRIDGE:

6 Q Mr. Berkahn, Mr. Hammerman asked you questions on
7 the types of farmers that probably went out. Conversely,
8 would you say that some practical well operated farms, what
9 percentage of those would you say went out of business?
10 Just a guess.

11 MR. WILES: I object to the question on the grounds
12 that a guess has no probative value and he has not certified
13 himself as an expert in this field.

14 JUDGE MCALPIN: The objection to a request for a
15 guess is well taken. If the witness knows or has an opinion,
16 he may express it, but to guess, I think would be wrong.
17 I sustain the objection as to guessing.

18 You may answer if you know.

19 THE WITNESS: There are a couple of things that are
20 a little difficult here. First of all, it is a question of
21 what is a well-run efficient operation.

22 I imagine that this would be dependent on who was
23 making that determination.

24 Let me respond in this way. I do know of personal
25 knowledge of neighbors, friends, ever since I have worked with

pat 1 NFO, I have known hard-working, dedicated, what I regard as
2 efficient businessmen who have been forced out of the dairy
3 business, not because he wanted to be, but because it was
4 either no longer possible for him to continue or else it
5 was certainly much more attractive for them financially to
6 seek other employment or produce other agricultural products.

7 BY MR. ALDRIDGE:

8 Q Most government or private studies tend to never
9 be truly up to date. So, is it not your job to project into
10 the future for your members?

11 A We try to have some idea as to what we can expect
12 to happen in the future, yes.

13 Q Then someone else -- how long does it take to
14 increase the production of milk? If grain were fed more
15 heavily because of the incentive of a higher price, it would
16 not take that long.

17 Then, it could be taken care of in three or four
18 months, could it be increased that quickly?

19 A I think we have a situation that exists right now
20 that has not existed before, at least since the 1940's, I
21 believe, where we have had for the first time a reduction in
22 output per cow.

23 The information that I have seen attributes that to
24 unfavorable feed price ratio. So, certainly, it would be
25 more profitable for a farmer to feed a more nutritious ration,

'pat

1 a more productive ration to cattle. I am certain they would
2 do so and with it would come increased production in a rather
3 short period of time.

4 Q In your experience with both kinds of milk buyers,
5 would you say that one buyer has more empathy to the producer;
6 that is worries more about the future of the industry than
7 the typical manufactured milk buyer who always figures he can
8 get it from Europe or somewhere?

9 Would you say he has more empathy?

10 A Again, I do not know how I would assess that in a
11 general sense. I know we have talked to buyers of various
12 commodities, buyers who produce various commodities from
13 milk.

14 We find that there are some of them who are very
15 much aware of current conditions and are very concerned about
16 the future.

17 I would say that we find them in all segments of
18 the industry.

19 I do not know that I would say that one segment is
20 more prone to be -- I do not know what the exact words were
21 you used there.

22 Q Well, Class I buyers have to have enough milk; they
23 might be short one day, but they need enough for the next day.
24 The manufactured milk buyer might get along very well with a
25 reduced supply. The Class I supplier has to have that every

1 day.

2 A Yes, of course. But, I do not know whether that
3 would be a yes answer to your previous question, however.

4 MR. ALDRIDGE: Thank you.

5 JUDGE MCALPIN: Are there further questions?

6 Mr. Morris.

7 BY MR. MORRIS:

8 Q Mr. Berkhahn, I do understand correctly, do I not,
9 that you market Grade B milk in substantial quantities?

10 A Yes.

11 Q And you do market in Minnesota-Wisconsin?

12 A Yes, as well as in other areas.

13 Q Do I understand that you had, at the time of
14 Exhibit 11 and still have, a demand price in that area; that
15 is a price at which you will sell it. Otherwise, you will
16 take the milk to other areas for other markets?

17 A That is not an accurate assumption. I would say
18 that, first of all, the good share of our markets are secured
19 with contracts with pricing clauses in them.

20 We really have no concern as far as those markets
21 are concerned. AT least up until the time the contract needs
22 to be renegotiated.

23 As far as the other markets that are either on
24 short term or verbal basis on a day-to-day sale, we have to
25 make a decision at that time whether or not to make the sale

33/pat

1 at a lower price or we take a look at what the alternatives are
2 and if there is a more profitable sale available, our members
3 expect us to make the sale to the most profitable market
4 possible.

5 Q My question specifically related to the information
6 that we gathered concerning Exhibit 11 in which you moved some
7 milk away from a market to a less profitable market, even
8 though it might have been marketed at that Minnesota-Wisconsin
9 level.

10 Was that milk moved from Minnesota-Wisconsin to
11 other markets?

12 A None of the milk that was contained here in this
13 exhibit, the exhibit referred to, was moved out of the
14 Minnesota-Wisconsin area. It was sold to another alternative
15 market in most cases.

16 Q In Minnesota or Wisconsin?

17 A Yes, sir.

18 Q How are your contract formulas generally arrived at?
19 Are they based on the Minnesota-Wisconsin price?

20 A Yes. Primarily. Or, in some cases, they are
21 based from an area price or some other variation of the two.

22 Q With some handling charge for laying down at the
23 plant.

24 A Yes.

25 MR. MORRIS: Thank you.

'pat

1 JUDGE MCALPIN: Any further questions. Mr. Cochran.

2 MR. COCHRAN: Your Honor, at this time, could we
3 get Mr. Morris to more specifically and concisely identify
4 the parties for whom he is appearing, with this respect.

5 I believe he said he was representing two groups of
6 ice cream manufacturers. Perhaps he can tell us if the
7 parties he represents are primarily ice cream manufacturers.

8 JUDGE MCALPIN: I think Mr. Morris has identified
9 himself and at this point I see no point in searching into
10 Mr. Morris' past.

11 He can ask any questions he wants in whatever
12 direction he wants to take them, so long as they are relevant
13 and material to the issues in this hearing.

14 MR. COCHRAN: I was just wondering from what base
15 he asks those questions.

16 JUDGE MCALPIN: His base is not important right
17 now except that he has already identified himself and I think
18 that is sufficient.

19 Are there further questions? Mr. Wiles.

20 BY MR. WILES:

21 Q The loss on Exhibit 11, the column loss, that is
22 not a loss that would be recognized by a Certified Public
23 Accountant, is it?

24 JUDGE MCALPIN: Mr. Wiles, you are going into a
25 loss completely and from every direction and angle. I think

pat

1 it has been explained and exactly what has been meant by the
2 witness has been testified to.

3 He has indicated he is not a statistician and he is
4 not, I am certain he is not a CPA. He did not claim that.
5 Let us go on to something else now.

6 MR. WILES: I am not trying to waste time, but
7 sometimes, Your Honor, he used words that give a curious
8 import to statements, and I direct this as a question to the
9 witness.

10 Do you consider availing yourself of a better
11 economic opportunity for a livelihood of being forced out of
12 your original pursuit?

13 THE WITNESS: I am not sure I understood your
14 question.

15 BY MR. WILES:

16 Q A lot of producers were forced out of business
17 because they had better economic advantages or better income
18 prospects in some other endeavors.

19 Is that being forced out or is that just taking
20 your option?

21 A As far as I, myself, am concerned.

22 Q No. You made it with respect to the producers of
23 milk.

24 A I know that the decision was made in some cases
25 was a voluntary one. In other cases, it was involuntary,

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1 through foreclosure or something like that.

2 Q Have there been a great many foreclosures, to your
3 knowledge?

4 A I do not have knowledge of how many there would be.
5 No.

6 Q Would you have knowledge of five?

7 A I know a number of large dairy operations in
8 Southern Wisconsin where it is common knowledge that they were
9 in financial trouble.

10 However, the arrangement there was not as cut and
11 dried as foreclosure, but it nevertheless had the same effect.

12 JUDGE MCALPIN: Further questions?

13 MR. PALMER: I have some, Your Honor.

14 JUDGE MCALPIN: Mr. Palmer.

15 MR. PALMER: I just want to be clarified on this.
16 Am I correct, is it your opinion that the milk supplied for
17 the markets involved, and I am talking now -- when I say
18 markets, I mean the marketing areas regulated by the orders
19 which you feel should be amended;; is it your testimony
20 that the milk supplied for those marketing areas was less
21 during the period of time with respect to which you have
22 testified than there was utilization available in those
23 markets?

24 THE WITNESS: Less than utilization available?

25 BY MR. PALMER:

7/pat

1 Q Yes.

2 A Yes. I would believe that this is the case, because
3 I know that it has been necessary for us to make shipments
4 of milk into some of these markets because supplies were not
5 available.

6 Q You are talking about marketing areas.

7 A Yes, sir.

8 Q Did the -- If the Minnesota-Wisconsin price without
9 the snubber had been the price for surplus milk in each of
10 those marketing areas during the period covered by your
11 exhibits, October '72 through December '73, in your opinion
12 would more milk have been available to those markets?

13 A If the producer had been given a higher price, many
14 of them would have been able to continue as well as perhaps
15 feeding heavier rations and would not have had encountered the
16 lower output per cow.

17 Q In the utilization of the Minnesota-Wisconsin price
18 without the snubber would have accomplished that?

19 A Yes, it would.

20 Q Would the total amount of milk that would have been
21 available to those marketing areas have met, exceeded or still
22 been below the needs of each of those markets in your opinion?

23 A I believe it still would have been below.

24 Q If the Minnesota-Wisconsin price without the snubber
25 had been in effect?

1 A Yes, I believe so.

2 Q You also stated or you stated during, I believe,
3 cross-examination by Mr. Morris that more milk is priced
4 under Minnesota-Wisconsin series than is priced under the
5 butter-powder formula. Is that correct?

6 A Yes.

7 Q I was not sure if I knew what you meant by that.
8 Did you mean that more milk is so priced under Federal Orders
9 or did you mean that in arm length negotiations or in
10 unregulated situations that more transactions are based upon
11 Minnesota-Wisconsin or just what.

12 A My position on that is this. More of the milk that
13 is utilized for processing into butter-powder and cheese is
14 produced either in areas where the Minnesota-Wisconsin series
15 is the pricing factor or else it is manufactured milk which
16 from a market situation is purchased at a price which relates
17 to the M-W milk.

18 For example, there are some areas that are or
19 butter-powder snubber and they have had a very insignificant
20 amount of total product, total manufactured product produced
21 in those areas.

22 Q In coming to terms with a milk handler as to the
23 price for milk that you would be shipping, and I am thinking
24 now of a butter-powder plant, probably butter-powder plant, in
25 arriving at a price, would you use as a starting price

39/pat 1 ordinarily, the Minnesota-Wisconsin series price and then
2 add to that? Is that the way you would do it ordinarily?

3 A Yes.

4 Q Is that the common practice in the industry, to
5 utilize Minnesota-Wisconsin price series as the basic figure
6 around which you construct your milk prices?

7 A It is as far as we are concerned.

8 It appears that people are willing to relate to the
9 Minnesota-Wisconsin series as being just that, a reasonable
10 value for milk, or a determining value for milk.

11 Q I almost feel that I am going to go after a horse
12 that has been beaten many times, your Exhibit Number 11.

13 I was somewhat unsure as to the relationship you
14 were trying to show between your figures as to loss and the
15 existence of the butter-powder snubber. I did not really
16 follow, in what way you were saying that the butter-powder
17 snubber produced the lowest figures.

18 A We feel that part of the reason the butter-powder
19 price is where it is at right now is because a significant
20 portion of butter and powder is produced from milk in which
21 a snubber formula is in effect.

22 For this reason butter-powder price received by
23 the processing plants in Minnesota-Wisconsin is such that
24 it is not profitable for them -- let us put it this way.
25 It is less profitable for them to process it into butter and

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1 powder as it is into per pail butter-powder operation and
2 offer that milk for sale, let us say, to a chief processing
3 plant or somebody else.

4 What we are showing here is the significance that
5 this situation is having on the base setting area. I do not
6 know what the other people or other buyers of milk are going
7 to be doing as far as their pay prices are concerned.

8 I only know this particular area, our pay price for
9 the month of January was 38 cents lower than it was for the
10 month earlier, because of this condition.

11 I point out again we feel that a significant factor
12 to this is the ability of buyers of product to secure a
13 significant amount of profit from a lower-priced area.

14 Q I think part of your testimony is that butter-powder
15 plants could absorb more milk than they are presently absorbing.
16 Is that correct?

17 A Yes.

18 Q Do you feel that the cheese plants could absorb more
19 milk than they are presently absorbing?

20 A I believe for the most part every cheese plant I have
21 knowledge with is operating at capacity.

22 Q So, is that, and I am interpreting your testimony to
23 the exhibit, is that then why you had these loss figures that
24 the cheese plants were not available to receive milk and you
25 had to go to butter-powder plants.

/pat

1 A Yes. There was additional supplies of milk that
2 normally would have gone through the butter-powder operation.
3 which were made available.

4 We use the word diverted into cheese plants, but
5 we do not use the word diverted into what you normally
6 associate with market terminology. The supplies are moved
7 out of the butter-powder plants and made available to cheese
8 plants.

9 Q Not your particular loads, your loads did not go
10 to cheese plants.

11 A Some of them did. Yes. But we had to make them to
12 cheese plants at either a lower value or in some cases
13 incurred increased transportation charges to receive
14 alternative markets.

15 Q I see. There is one document. You were asked some
16 questions before and, of course, basic to your testimony is
17 the Minnesota-Wisconsin price series and how it operates.

18 I have here a document that I would ask that official
19 notice be taken of. It is entitled, "Prices Received by
20 Farmers for Manufacturing Grade Milk in Minnesota and Wisconsin"
21 1970 through '72.

22 Its date is July 1973. It is prepared by the Crop
23 Reporting Board, Statistical Reporting Service, U. S. Depart-
24 ment of Agriculture, Washington, D. C.

25 I would ask that official notice be taken of this

P R O C E E D I N G S

1
2 JUDGE McALPIN: Good morning, gentlemen. This
3 hearing is now open and on the record. This is the second day
4 of the butter-powder snubber hearing. I like saying that,
5 and you can see I have been practicing. Yesterday at recess
6 for the day we had completed the testimony and cross-examina-
7 tion of Mr. Berkhahn, representing the National Farmers Organi-
8 zation on Proposals 1, 2 and 3.

9 Mr. Cochran, do you have any other further witnesses
10 on Proposals 1, 2 and 3?

11 MR. COCHRAN: Not at this time, Your Honor, but we
12 may later as things develop.

13 JUDGE McALPIN: All right, sir. Now according to
14 our announced procedure we are now ready to hear from the
15 proponents of the other proposals in the first group that we
16 announced in our procedural plan, namely Proposals 4, 10, 11
17 and 5.

18 MR. MORRIS: Judge, prior to calling your next wit-
19 ness may we make a request of the government regarding certain
20 figures for the record?

21 JUDGE McALPIN: Since this is coming over a loud-
22 speaker, I don't know who is talking.

23 MR. MORRIS: I'm sorry. Mr. Morris.

24 JUDGE McALPIN: All right, Mr. Morris.

25 MR. MORRIS: Thank you, sir. It has become

1 apparent that one of the critical focuses of this hearing and
2 the subject of both testimony and recommendations relates to
3 the Minnesota-Wisconsin Series Price as it has been called.

4 There is certain material released concerning the
5 Minnesota-Wisconsin Price and how it is compiled in a general
6 way by the government. However, as far as we have been able
7 to determine, the detailed information regarding the plants
8 used in each month's sample, their mix of products and their
9 shipment patterns are not publicly available.

10 For the purpose of testing the applicability of that
11 formula which many proponents are recommending for use in a
12 price ceiling determination of a major magnitude in these
13 markets we would like at this time to request the government to
14 produce as soon as they can certainly before this hearing ends
15 the following information relating to the Minnesota-Wisconsin
16 determinations.

17 Namely, the identity of each plant used in each
18 month for the year 1973 and to date this year, together with
19 such information as the government has in its possession re-
20 garding the make of those plants and the product mix in those
21 plants as well as the shipment locations to which those plants
22 ship, or the channels through which they sell.

23 We would like to have this information for the purpose
24 of testing the representative of this formula, in terms of the
25 general descriptions given by the government. We express this

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1 respectfully, although we have reservations regarding the ap-
2 propriateness of that determination, both in terms of the way
3 it is made and in terms of the representative nature it has
4 been alleged to have.

5 That completes our request to the government, sir.

6 JUDGE McALPIN: The best I can say to you is your
7 request is now of record and I am imagine the government will
8 consider it. Whether that information is forthcoming, I cannot
9 order it, I cannot request it.

10 But your request is now of record.

11 MR. HAMMERMAN: May I join in that request, Your
12 Honor?

13 JUDGE McALPIN: You certainly may, Mr. Hammerman,
14 and the record so shows.

15 MR. CHERNOFSKY: Your Honor, I just have some ques-
16 tion about the government providing that data. When they make
17 this decision I would like them to consider the fact that much
18 of this data is confidential information. It is proprietary
19 information, belonging to the companies.

20 And it is provided to the government on a confidential
21 basis. And I wish they would consider that when they consider
22 the request.

23 MR. MORRIS: May I simply say, sir, in response to
24 that that we take the position both legal and as a matter of
25 practical necessity that a major price determinant for prices

1 throughout the United States cannot be based on such confiden-
2 tial information. That it cannot be tested by the parties
3 subject to that price.

4 JUDGE McALPIN: Any further statements?

5 MR. CHERNOFSKY: Yes, Your Honor. On that basis,
6 the data that is put together and presented as composite data
7 from different plants would serve the same basis and the same
8 purpose. To require that from individual plants, I don't
9 think -- I just happen to feel that requiring this information
10 on a plant-by-plant basis will not provide any additional data
11 that the composite data wouldn't.

12 And it would be an infringement upon the confiden-
13 tiality.

14 MR. MORRIS: Your Honor, I don't want to belabor this
15 point, but let me point out the information I have requested
16 can hardly be considered confidential, inasmuch as all of the
17 farmers who sell to each of those plants know it, and all of
18 the buyers who buy from each of those plants know it.

19 JUDGE McALPIN: Of course it is not my decision to
20 make, Mr. Morris, but I think we should all keep in mind that
21 the information, evidence, testimony, etcetera, being gathered
22 at this hearing is for the benefit of the Secretary of Agri-
23 culture.

24 He probably knows it and doesn't need it in the
25 record. But this is not my decision to make.

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1 (Laughter)

2 MR. PALMER: Your Honor, I think we should make a
3 statement, so we don't have the issue hanging. As I understand
4 it, and of course I don't prepare the Minnesota-Wisconsin
5 Price Series, but my understanding is that it is a composite
6 of representation of the prices that are paid by various manu-
7 facturing plants in those two states.

8 I think the identity of the plants is probably
9 known by most people here, in terms of which plants deal up
10 in that area. The genuineness of the composite compilation,
11 I think, would have to be accepted, since it is being done by
12 a public agency.

13 However, as far as the details, what each plant
14 does produce and what it does pay to its various producers and
15 various suppliers, that does come within the scope of confiden-
16 tial material.

17 The reason we can have a Minnesota-Wisconsin Price
18 Series, as I understand it, I am talking now as an attorney
19 who has not really consulted with the administrative agencies
20 in any great detail on this. But I understand that the reason
21 we can have such a series is because of the statutory prohibi-
22 tion that prohibits us from releasing this information.

23 For that reason, the handlers do provide us with it
24 and it is that that enables the Department to put together
25 these figures and publish them. They are published and

1 referred to by members of the industry. I think everyone here
2 does know what the situation is in Minnesota-Wisconsin in
3 terms of which plants are operating there in a general way.
4 I think that is about all I could say.

5 We could not reveal the sources in terms of the
6 details of each of these plants that make up this information.
7 So we would not be able to comply with that request.

8 MR. HAMMERMAN: Your Honor, I join with Mr. Morris'
9 request, and I believe the request as he made it is preferable,
10 where we had the identity of each plant. If that is not possi-
11 ble, in view of what Mr. Palmer just told us, I think I would
12 be satisfied if we received the same information.

13 But having the plants coded, rather than having the
14 names revealed. In other words, if we have Plants A, B, C,
15 D and so forth, and have the individual information without
16 revealing any confidential information it would be helpful to
17 this hearing.

18 JUDGE McALPIN: Gentlemen, I am a little concerned
19 about the request, purely from the standpoint of the hearing
20 process. The Secretary is under no obligation to furnish you
21 information. You are here to furnish information to him, on
22 the basis of which he is to take action as to whether or not
23 the amendments proposed will be acted upon favorably or unfavor-
24 ably.

25 So far as I know, there is no provision for discovery

1 in these hearings. This is a request which I indicated has
2 been made a part of the record.

3 The agency representatives are here. They have
4 heard the request and if it is within their authority, juris-
5 diction, power or desire to furnish that information during
6 this hearing, I imagine they would do so.

7 If they find it is not, then they will not do so.
8 But that isn't going to stop our hearing from moving on, be-
9 cause that is not the purpose of this hearing. May we proceed
10 now?

11 MR. MORRIS: May I say before we go further, my
12 disagreement with counsel for the government's position. I
13 wish to make the record clear. We do feel that this informa-
14 tion is necessary, to test the validity.

15 Thank you, sir.

16 MR. CRAMER: Your Honor, my name is Shane Cramer. I
17 represent Rich Valley Department of Farmers, and I would
18 like to join in Mr. Morris' request for the information from
19 the Department.

20 JUDGE McALPIN: All right, sir. The record so shows
21 you have joined. Mr. Cochran?

22 MR. COCHRAN: I have a position to state on this
23 matter, Your Honor. I am in opposition to the request.

24 JUDGE McALPIN: Let the record show that you are
25 opposed to it, but we don't need the arguments with reference

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1 to pro and con. I have ruled that I will not make the request
2 and that the record now shows the request having been made, and
3 I have indicated that the agency representatives are here and
4 have heard it.

5 If any action is taken on it, it would appear later
6 in the record, and if it is not, it will not appear. Are the
7 proponents of Proposal No. 4 ready?

8 MR. COPELAND: If Your Honor please, I represent the
9 proponents of Proposal 4. I note that my witness has not yet
10 arrived this morning. I do believe that Mr. Judson Mason, of
11 the National Milk Producers Federation, has a statement to
12 present.

13 And I would be just as well satisfied if he would
14 go ahead, if that is agreeable with Your Honor.

15 JUDGE McALPIN: Is the statement concerning Proposal
16 No. 4?

17 MR. MASON: Your Honor, the statement will be a
18 modification of Proposals 1, 2, 3 and 4.

19 JUDGE McALPIN: It will be a modification of 1, 2,
20 3 and 4? Well, maybe we had better wait until we get four in.

21 MR. MASON: It is, in fact, a modification of every
22 proposal. From my understanding of the procedures yesterday
23 we would take witnesses who would speak to the general subject
24 to begin with, and then specific proposals thereafter.

25 From that understanding we assumed we would be the

1 but I should hope we could get to it before the day is over.

2 Whereupon,

3 PAUL E. HAND

4 having been duly sworn by the Chief Administrative Law Judge
5 was called as a witness herein, and was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. COPELAND:

9 Q Dr. Hand, would you state your full name and address
10 please?

11 A My name is Paul E. Hand. I reside at 1429 Miranda
12 Lane, in Warminster, Pennsylvania, 18974.

13 Q By whom are you employed?

14 A I am employed by Interstate Milk Producers Coopera-
15 tive as an economist and Assistant General Manager, and I
16 also have the title of Secretary of the Pennmarva Dairy Coop-
17 erative Federation, Inc.

18 Q Is Inter-State also a member of Pennmarva?

19 A Yes.

20 Q How long have you been employed as an economist by
21 Inter-State?

22 A Since 1957.

23 Q Would you state for us your educational background
24 and past experience in the area of milk marketing?

25 A I have a Ph.D in dairy marketing and economics

1 from the Pennsylvania State University. I participated in
2 over 150 of these hearings concerned with milk marketing be-
3 fore the U.S. Department of Agriculture in the state of Penn-
4 sylvania, the state of New Jersey and in the state of Calif-
5 ornia.

6 Q Dr. Hand, do you have a prepared statement?

7 A Yes, I do.

8 MR. COPELAND: If Your Honor please, Dr. Hand has a
9 prepared statement of four pages, to which are attached three
10 tables. I wonder, as a matter of convenience, if we might
11 have the entire document given an exhibit number.

12 JUDGE McALPIN: Let the record show that the docu-
13 ment is identified as Exhibit X-12, for the purpose of making
14 the tables which are identified as 1, 2 and 3 and the order
15 in which they appear as exhibits.

16 (The item referred to was marked
17 for identification as Exhibit
18 X-12).

19 JUDGE McALPIN: My understanding is that his state-
20 ment will be read into the record.

21 MR. COPELAND: Yes. His statement will be moved
22 into the record, and I will move the admission of the tables.
23 Would you proceed, Dr. Hand?

24 DR. HAND: The statement is in reference to Emergen-
25 cy Class II price increase. Pennsylvania Dairywomen's Cooperative

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1 Federation, Inc., and its members, Inter-State Milk Producers'
2 Cooperative, Inc., Maryland and Virginia Milk Producers Asso-
3 ciation, Inc. and Maryland Cooperative Milk Producers, Inc.
4 support the hearing proposal to provide that the Minnesota-
5 Wisconsin price be used to establish Class II prices in Orders
6 1, 2, 4 and 15 until such time as the price arrived at from
7 the butter-powder formula is equal to or in excess of the
8 Minnesota-Wisconsin price.

9 This support for an emergency hearing and expedited
10 action is occasioned by the wide differences which have recent-
11 ly developed between the Class II price resulting from the
12 use of the butter-powder formula and the Minnesota-Wisconsin
13 price, Table 1, Exhibit X-12.

14 In addition, the use of the butter-powder formula re-
15 sults in a substantial increase in the spread between the Class
16 I and the Class II price for the current month. For example,
17 the Class I price in Federal Order 4 for January, 1974, f.o.b.
18 Philadelphia was \$10.48 per hundredweight while the Class II
19 price was only \$7.03 per hundredweight.

20 For February, 1974, the Class I price is \$10.78 or approx-
21 imately \$3.75 above the Class II price which is expected to
22 result from the butter-powder formula in February. For March,
23 1974, the Class I price will be \$10.94 per hundredweight.

24 Since January 1, 1970, there have been three periods
25 when the butter-powder formula price and the Minnesota-Wisconsin

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1 price have varied by more than 25 cents per hundredweight,
2 Table 1, Exhibit X-12. The first period was January-March,
3 1970 when the Minnesota-Wisconsin price was from 31 to 42
4 cents over the butter-powder price. The second period was
5 during August and September, 1973, when the butter-powder
6 price was 36 and 33 cents, respectively, over the Minnesota-
7 Wisconsin price.

8 And finally, since October, 1973, the Minnesota-
9 Wisconsin price has exceeded the butter-powder formula price
10 by \$.67, \$.78 and \$1.13 for October, November and December,
11 respectively. Regarding Emergency Class II price increase.

12 The most recent swing in prices, with the Minnesota-Wis-
13 consin price increasing \$1.19 per hundredweight from the \$6.91
14 level during September while the butter-powder formula price
15 declined over 40 cents from the \$7.24 level during September,
16 1973 has given us great concern about the appropriateness of
17 the current formula for pricing all Class II products.

18 Under normal economic relationships, we would have
19 no concern. However, this price disparity was the result of
20 actions by the Executive Branch of the government. First, the
21 relaxation of import restrictions and allowing substantial
22 volumes of non-fat dry milk powder to be imported.

23 And, second, allowing about 86 million pounds of butter,
24 and butter oil to be imported caused a substantial decline in
25 butter prices and a stabilizing of prices of powder. During

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1 the same period, the cheese market has continued to be influ-
2 enced by a strong consumer demand and rising prices.

3 Until these recent developments, in the international
4 trade field, the Class II pricing formula under Order 4, using
5 both a butter-powder formula and the Minnesota-Wisconsin price,
6 worked reasonably well, since the market values of milk used
7 in butter-powder and cheese, as reflected in the Minnesota-
8 Wisconsin Series, historically have tended to converge.

9 When cheese plants were in a position to pay a higher
10 price for milk, they bid such milk away from butter and powder
11 plants, which caused the butter-powder plant operators to pay
12 more for milk.

13 At the same time, the shorter supplies resulted in
14 higher farm prices. Since January, 1970, the overall average
15 difference in prices between the butter-powder formula and
16 the Minnesota-Wisconsin Series has been about four cents, Table
17 1, Exhibit X-12.

18 During the 48 month period, butter-powder prices
19 were above the Minnesota-Wisconsin Series 24 times and the
20 converse was true 23 times. The introduction of large volumes
21 of finished products via the import route changes this adjust-
22 ment process radically.

23 Dairy farmers should not have their prices for all
24 Class II products reduced by this type of arbitrary adminis-
25 trative action. The major use made of Class II milk in Order

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1 No. 4 is in the so-called soft products, namely, cream, cot-
2 tage cheese, ice cream and ice milk mix and whole and skim
3 condensed and evaporated milk. To a lesser extent, milk is
4 utilized in butter and non-fat dry milk powder, Tables 2 and
5 3, Exhibit X-12.

6 Under the present Class II pricing formula, all
7 Class II milk is priced at the lower of the basic formula or
8 the butter-powder formula prices. Application of this formula
9 does not allow producers to recover the full value from
10 Class II milk when butter and powder prices are artificially
11 depressed by imports.

12 This is depressing to farmers and uneconomic when
13 the reduction in the butter-powder price is not related to the
14 value of other Class II products or to general economic forces
15 affecting all of the other Class II dairy products.

16 In addition, a substantial number of Federal Orders,
17 27, that number has been increased by the most recent final
18 decision, utilize the Minnesota-Wisconsin price series in
19 pricing Class II milk. Under these circumstances, the general
20 price level for Class II products in these markets is at a
21 higher level than the price for Class II products in the north-
22 east.

23 This is contrary to any sound method of uniform
24 pricing among the several Federal Order markets. If this
25 situation were to continue for an extended period of time,
serious dislocations could occur in the location of production

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1 facilities.

2 Based on the historic price relationships among
3 the different manufacturing milk pricing formulas, the present
4 disparity must be considered as unreasonable, uneconomic and
5 intolerable. The only course to follow is to correct the
6 situation as soon as possible and in no event later than
7 March 1, 1974, by suspending the Class II formulas in Orders
8 1, 2, 4 and 15 to result in the Minnesota-Wisconsin price
9 establishing Class II prices until a more permanent amendment
10 can be accomplished in each of the aforementioned Orders.

11 This hearing should be handled on an expedited basis,
12 eliminating a recommended decision, for two reasons. One,
13 the decline in milk production continues and prices of imports
14 are increasing.

15 Two, the wide difference between the basic formula
16 price and the butter-powder formula is growing wider and this
17 is counter to orderly marketing and uniform pricing.

18 Although Pennmarva members have less than 50 produ-
19 cers in Order 2 and none supply Orders 1 and 15, it is our
20 judgment that any change in Class II prices should be made
21 uniformly across these Northeast Orders. This is the reason for
22 our proposal for the four markets, even though our experience
23 is limited to production conditions affecting the Middle
24 Atlantic Order and milkshed.

25

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1 BY MR. COPELAND:

2 Q Dr. Hand, on Page 5, you refer to the 27 Federal
3 Orders and you stated that this figure has been increased as
4 a result of recent final decision. Are you referring there
5 to the so-called 39 market decision of which official notice
6 has already been taken on this record?

7 A Yes. Specifically to those markets included therein
8 that utilize the butter-powder formula. Not all 39 had the
9 butter-powder formula.

10 Q Do you have anything further to add to your testi-
11 mony?

12 A No, I do not.

13 MR. COPELAND: If Your Honor please, in accordance
14 with the procedure that you have already established, I would
15 like to offer the tables attached to Exhibit 12, which have
16 been marked Exhibit X-12, I suppose, bracket one, two and
17 three.

18 I would offer those at this time, and Dr. Hand is
19 available for cross-examination.

20 JUDGE McALEEN: Let the record show that, without
21 objection, the document identified as X-12 is received in
22 evidence, specifically for the purpose of making Tables 1, 2
23 and 3 a part of the evidence and testimony.

24 (The item previously marked for
25 identification as Exhibit X-12

was admitted into evidence).

JUDGE McALPIN: Anything further, Mr. Copeland?

MR. COPELAND: Dr. Hand is available for cross-examination.

JUDGE McALPIN: Mr. Smith.

CROSS-EXAMINATION

BY MR. SMITH:

Q Dr. Hand, on Table 2, this product breakdown, first I want to ask you if you could go across the page horizontally and explain with respect to each product column whether the figures represent milk or cream or skim milk, respectively, or mostly?

A With regard to fluid cream, it would represent basically milk.

Q Pounds of milk?

A Utilized in fluid cream, yes.

Q Used to produce cream.

A Food processing, I am not sure of that. In cheese, again it would represent basically milk. For whole and skimmed condensed and evaporated milk, it would represent both whole milk and skim milk. The same is true for the column non-fat and whole milk powder.

It would be a combination of whole and skim milk. Ice cream and ice cream mix, I am not sure, and the other categories I am not sure. In Table 3, it is a breakdown of

1 the figures for 1972 with the pounds of fat included in the
2 product output and examination of that would give you the
3 same basic comparison that Mr. Plumb gave yesterday, regard-
4 ing each of the products.

5 Q Referring to Table 3, you have one combination there
6 that seems to me is quite intriguing. The combination of
7 butter, egg-nog and yoghurt in the one figure. Have you any
8 information from which you could indicate how much of those
9 combined quantities are just butter?

10 A No. Not specifically. This was aggregated in that
11 fashion to eliminate any problems of confidentiality.

12 Q Back in your text, near the bottom of Page 3, you
13 urge, first, a suspension and then in the latter part of the
14 sentence you say, and I am quoting, quote, "Until a more
15 permanent amendment can be accomplished" unquote, and so on.

16 My question is, is a more permanent amendment that
17 you visualize there an amendment that you would expect to be
18 derived on the basis of the evidence in this hearing?

19 A At the time that we prepared the statement for this
20 hearing the answer would have been no. However, based upon
21 what has since transpired, the answer would have to be yes.

22 Q What do you refer to, when you say what has since
23 transpired?

24 A Well, the number of companies included in this
25 hearing, the scope of the proposals included in this hearing,

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1 and the subsequent final decision by the Secretary regarding
2 the 39 other markets.

3 Q Do I correctly gather from that statement that the
4 rather large number of proposals indicates the complexity
5 of the problem that might take some considerable time to make
6 a proper evaluation?

7 A No I think it just indicates the various interests
8 that were expressed in the proposal.

9 MR. SMITH: That's all.

10 JUDGE McLENNAN: Further questions, gentlemen? Mr.
11 O'Connor.

12 CROSS-EXAMINATION

13 BY MR. O'CONNOR:

14 Q Dr. Hand, if I ask you any questions and you consid-
15 er the answer confidential, I won't be offended if you don't
16 answer. Now, the Pancreatic Cooperative Association, is that
17 not composed of what was, I believe, three separate coopera-
18 tive associations?

19 A Well, what still are three separate cooperative
20 associations. It is still a federation.

21 Q Yes. You are speaking for that Federation and all
22 its members?

23 A Yes.
24 Q Would you be willing to say what those three separate
25 groups are?

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1 A Inter-State Milk Producers Cooperative, Maryland and
2 Virginia Milk Producers Association, Inc. and Maryland Cooper-
3 ative Milk Producers, Inc.

4 Q Could you tell us generally the geographical extent
5 of the Order 4 marketing area, in terms of the large, metro-
6 politan centers included in the marketing area?

7 A The three major metropolitan areas would be Phila-
8 delphia, Baltimore and Washington, and also Trenton and Wil-
9 mington.

10 Q Could you give us a reasonable approximation as
11 accurately as you can give it considering the total dairy
12 farmers who are producers under Order No. 4?

13 What percentage of that total portion do you speak
14 for?

15 A Approximately 60 percent.

16 Q Do any of the members of your Federation operate a
17 butter-powder plant?

18 A Yes.

19 Q That circumstance does not interfere at all with
20 what you take is the correctness of your position? That is,
21 you don't feel that the existence of that butter-powder plant
22 should defeat your members obtaining an adequate income?

23 A No, it does not. They are fully in support of this
24 proposal. That is the operator of the butter-powder plant.

25 Q Now, you have been here throughout the hearing, I

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1 believe.

2 A Not in total, no. I had to leave yesterday after-
3 noon.

4 Q It appears that we have a group of interests here
5 that are represented by ice cream manufacturers. You are
6 conscious of that?

7 A Yes.

8 Q Considering two factors, the desire of these ice
9 cream manufacturers to buy their milk at a lesser price, and
10 the factor of the dairy farmers in these orders obtaining an
11 adequate price for their milk, which one of those two should
12 be the overriding consideration for the determination of the
13 issue here?

14 A Insofar as the interests that I represent, that is
15 the interest of the dairy farmers. However, it is not incon-
16 ceivable that both of these interests and ends could be achie-
17 ved by uniform pricing.

18 Q By the uniform price which you advocate?

19 A Yes, sir.

20 MR. COCHRAN: That's all I have.

21 JUDGE McALPIN: Further questions?

22 CROSS-EXAMINATION

23 BY MR. MORRIS:

24 Q Dr. Hand, there was initiated earlier this month a
25 hearing in Order 4 in which your cooperative is involved, an

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1 I correct?

2 A. That's correct.

3 Q That hearing is currently proceeding, and has been
4 adjourned for the purposes of these proceedings, as we both
5 know. In that hearing, your cooperative association, that
6 is the Pennmarva, submitted proposals regarding Class II pri-
7 cing.

8 A. That is correct.

9 Q And the proposal submitted in that hearing suggests
10 that the butter-powder snubber continue to govern butter-powder
11 prices; is that correct?

12 A Butter and non-fat dry milk products; that is
13 correct.

14 Q That was submitted at that hearing?

15 A That is correct. The proposal is that the Class II
16 products be priced at the Minnesota-Wisconsin Price, plus 10
17 cents.

18 Q You would agree, I take it, that the production of
19 milk, at least in the orders with which you are familiar and
20 which you have here testified, is dependent on the price
21 which farmers receive for milk in its blend form; am I correct?

22 A With certain adjustments allowing long-term decision-
23 making on the part of the producer, that is correct. There is
24 immediate, day-to-day response, and that is why the reference
25 to the blend price may not be totally accurate.

1 Q What would you think a price, a production price
2 during a lag time might reasonably be considered to be?

3 A There are various supply models that have been dev-
4 eloped to study this problem. They range from a six-month
5 short-term response to a two-year long-term response. This is
6 absent or abstracting from the immediate response to violent
7 changes in feed prices, such as we experienced last year, and
8 are continuing in effect.

9 That I don't think was ever a part of the structure
10 used in any of these models. So that type of a response would
11 have reduced production much more substantially than in a nor-
12 mal price relationship.

13 Q I take it that this shorter term type of response
14 as a result of prices of feed may also have a shorter response
15 period on the up side as the prices of feed change, should
16 they decline.

17 A I doubt that they will decline, but we hope to see
18 a positive response to the higher milk prices.

19 Q Now, the higher milk prices, which you are here
20 recommending that a suspension of the proposal would affect
21 the blend prices, and in Order 4 it would affect the excess
22 price, which is translated into direct income to dairy farmers..

23 A The dollar increase in Class II price would be a
24 dollar increase in the excess price.

25 Q In that respect, Order 4 differs, does it not, from

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1 1, 2 and 15 and the other numbers here under consideration,
2 33, 36, 40 and 49?

3 A. I am not familiar with all of them. I believe one
4 of the orders in Michigan has a base plant. I don't know if
5 it has been suspended or not.

6 Q. During the past year, 1973, past calendar year, you
7 agree, would you not, that there have been very substantial
8 increases in the blend price in Order 4 on the order of
9 \$1.80 or so?

10 A. In an absolute term, that is correct. In a relative
11 term to cost of production, that is not correct.

12 Q. I take it you mean by that that the cost of produc-
13 tion has also risen?

14 A. Yes. Faster than the increase in average price in
15 1973.

16 Q. I am not sure what you mean by average price.

17 A. Blend price. The average for the year, abstracting
18 the last month.

19 Q. Well, at the bottom of the equation is the fact that
20 at the end of '73 the blend was \$1.80 higher than the blend
21 at the beginning of the year. Is it your suggestion that
22 cost of production has risen more than 20 percent?

23 A. Yes.

24 Q. Can you give us some data on the costs which you
25 take into account?

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1 A Yes. Approximately doubling of feed costs, which
2 represents approximately 40 percent of the cost of production.
3 That gives you your 20 percent at that point. You have cost
4 of fertilizer and feeds -- excuse me, feeds which have doubled
5 and more than doubled in 1974 over 1973.

6 So these factors alone would account for at least
7 20 percent increase in cost production.

8 Q Are there some current statistics, data gathered by
9 Pennsylvania or Maryland or the D.C. area which tabulate the
10 cost of production plus or minuses for the year?

11 A There are some available. I don't know if I have
12 them with me at this time.

13 Q Perhaps you could refer me to some of the data of
14 which you are thinking.

15 A I am thinking of raw costs. I am not thinking of
16 the cost of production, in my previous answer to you. The
17 data which is available is published by the Pennsylvania
18 Crop Reporting Service.

19 They are not available at this time for the year
20 ending 1973. I don't recall what the last month was for their
21 data. The Pennsylvania State University will, later this
22 year, release a cost of production study which is an annual
23 project, in cooperation with the Farmer Accounting Service of
24 the Pennsylvania Farmers Association.

25 Those are the two sources that I follow very closely.

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1 Q When we have such a study, will it take into account
2 apart from the raw cost increases such efficiencies as produ-
3 cers have been able to tell us?

4 A Yes. But I would hasten to point out that the
5 major efficiency which we have seen over a time has been the
6 increase and output per animal and the increase there was
7 totally nonexistent, and it continues at a substantially re-
8 duced level, or zero, compared to previous years.

9 So we cannot look upon efficiency to bail us out
10 of this particular problem.

11 Q Well, that particular efficiency, output per animal,
12 is largely dependent upon feed, feeding procedure; is it not?

13 A That is one important component; that is correct.
14 Another important component is the quality of animals which
15 are retained in the herd, and the quality of dairymen who
16 are staying in the business.

17 Q Now the recovery, or the continued increases of pro-
18 duction per animal was one of the items which you mentioned as
19 being of short-term response, and other types of production
20 increases; correct?

21 A That which is associated with feeding, yes. That
22 which is associated with breeding, though, and quality of
23 dairymen is a long-term. It is very difficult to isolate
24 these in a precise manner.

25 Q The particular reason that I asked that is because

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1 I note that the greatest increase in the blend price, by far
2 the greater proportion of it, and I am sure -- it took place
3 during the second half in Order 4, and in other Orders of 1973.

4 Consequently, the question I put to you is whether
5 or not that response in terms of per animal production being
6 this year less satisfactory than other years will not respond
7 in a shorter time to the more recent blend price increase.

8 A Yes. There will be some response. That is on the
9 existing herds I think another important part which is rather
10 difficult to estimate at this time is the decision which the
11 dairymen will make this spring regarding continuing in pro-
12 duction.

13 I don't think the milk prices are high enough yet,
14 to offer total herdsmen in that regard.

15 Q What I am speaking to clarify for my own mind is
16 whether or not you feel that experience with the higher blend
17 prices which were generated towards the end of 1973 and any
18 efficiency which may result from the better blend price picture
19 and therefore, perhaps better feeding picture, will be reflect-
20 ed in the studies you mention are forthcoming.

21 Is that study going to be too premature for that?

22 A Yes. They will not be reflected in those studies.

23 Q Do you have any idea when this cost production study
24 will be published?

25 A It is rather unpredictable as to when it comes out.

1 The Pennsylvania University data are normally available some
2 time after May. I assume it is irrelevant, almost.

3 Q I assume that that would not be an argument for
4 relevancy. Dr. Hand, on Table 2 of your presentation you
5 have outlined for '71 through '73 by month and in total the
6 pounds of milk, cream and skim used in Class II.

7 First of all, with respect to the whole and skim
8 condensed and evaporated column, can you give us an idea of
9 what that column finds its way into, substantially? Would it
10 be ice cream, in other words?

11 A I would assume it would, yes. And food manufactur-
12 ing.

13 Q Might we assume that food manufacturing would be
14 in food processing, I take it?

15 A Yes.

16 Q Might we assume something like the percentage rela-
17 tionships between food processing which is in the direct
18 column and ice cream which is in the direct column, or would
19 you have any way of estimating that relationship?

20 A I would have no way of estimating, nor would I argue
21 with that assumption.

22 Q The picture in total indicates a decrease disposition
23 for pounds of milk, cream and skim milk in 1973 over the
24 previous two years which were not far apart. Do you have an
25 explanation for that in terms of where the product went or if

1 it was made at all?

2 A. No, I don't.

3 Q. Certainly, a proposal which would increase substan-
4 tially the cost of manufacturing would not be expected to
5 improve or to increase the total pounds of milk, skim milk
6 and cream used in Class II, I take it.

7 A. I don't understand your question.

8 Q. You are recommending that in Order 4 as well as in
9 the other orders, the order reflected on Table 2, a substan-
10 tial increase in the cost to the manufacturer of the ingred-
11 ient which he is going to manufacture.

12 My question is a substantial increase in that ingred-
13 ient cost to the manufacturer would not be expected to increase
14 total manufacturing or total Class II utilization under the
15 Order, would it?

16 A. I don't think it is a relevant question. The amount
17 of Class II milk which is utilized under the Order is a resid-
18 ual after Class I use. If you have uniform pricing across the
19 country, I don't think your question is relevant.

20 Q. Apart from whether you think it is relevant, the
21 point of the fact is that unless all markets regulated and
22 unregulated were uniformly at price levels approaching those
23 which you request here, milk is not going to be manufactured
24 under the Order, or the market is not going to be cleared under
25 the Order, is it?

1 A It will be cleared, yes. It is not cleared under
2 the Order now, as far as facilities to handle the milk. Many
3 non-food plants are called upon to process milk.

4 Q Can you tell us whether the utilization of non-food
5 facilities to clear the market in terms of milk produced in
6 the market increased in 1973 over 1971 and 1972?

7 A I cannot, with any specificity. My inclination is
8 to say that there would probably be a greater percentage of
9 milk going to non-food facilities, but only slightly greater.

10 Q Directly speaking, presuming the government import
11 which you suggest in your statement it should, will not the
12 import product available be available at a substantially less-
13 ser price than those which you are recommending for all manu-
14 factured products here now?

15 A That is a rather difficult question to answer, be-
16 cause it depends on several things. First, it depends on
17 whether there are additional imports. Second, it depends on
18 whether the government follows the rules of the game and
19 collects the countervailing duties which it should be doing.

20 With those two imponderables, I can't answer the
21 question.

22 Q Let me come at it, then, another way. Let me ask
23 you to assume that the import policies in the past calendar
24 year, 1973, had been those which you would have recommended.
25 That is, either less duties or some form of duty.

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1 Can you indicate for us what you think the effect
2 might have been, if any, on the butter-powder formula price?

3 A. Well, from the information we have been furnished,
4 had they only collected countervailing duties, the butter-
5 powder formula would have been competitive with the Minnesota-
6 Wisconsin Price.

7 Q. In other words, this policy alone would have con-
8 tinued the alignment or something close to the alignment be-
9 tween those two prices?

10 A. Yes. And there would have been less product imported
11 under those types of conditions.

12 MR. MORRIS: That's all, sir.

13 JUDGE McALPIN: Further questions? Mr. Hammerman.

14 CROSS-EXAMINATION

15 BY MR. HAMMERMAN:

16 Q. Dr. Hand, I want to refer specifically to Page 2
17 of your prepared statement. In the first paragraph, about the
18 middle of the page, you mention under normal economic relation-
19 ships we would have no concern.

20 Then you go on to mention that there are two actions
21 of the government which did cause your concern; is that correct?

22 A. Yes.

23 Q. Would you agree with me that over a long period of
24 time there were changes in the butter-powder formula in the
25 Minnesota-Wisconsin Price Series?

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1 A. Well, they tended to adjust to changes in the indus-
2 try so that there was a convergence and a reasonable align-
3 ment, yes.

4 Q. And the first action of the government to which
5 you allude is their permitting the importation of dairy pro-
6 ducts; is that correct?

7 A. Yes.

8 Q. But then you go on to make reference only to the
9 importation of powder and butter. Did not the government
10 also permit the importation quite recently of 100 million
11 pounds of cheddar cheese?

12 A. They permitted that; that is correct.

13 Q. So that with respect to the problem of importation,
14 the government, by allowing the importation of each of these
15 products did not distort the relationship among them; is that
16 correct?

17 A. Oh, yes, they certainly did. What you say is in-
18 correct. What happened was a tremendous distortion.

19 Q. Well, they did permit the importation of each of
20 these products, since they did not discriminate among products
21 how do you get the distortion to which you refer?

22 A. From the resulting prices.

23 Q. The prices of imports?

24 A. The price of the product in the marketplace in
25 the United States.

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1 Q At this point you are saying that the domestic
2 price for domestically produced products was influenced only
3 because of the imports; is that correct?

4 A They were increased in substantially different di-
5 rections by the imports; that is correct.

6 Q Can you tell us how we could determine the influence
7 of the imports? In other words, let me put it this way --

8 No, I can't. I can't tell you the precise amount.
9 I know of any economist who can.

10 Q I didn't ask for any precise figures. I will give
11 an illustration, and tell me whether my conclusion from that
12 is erroneous. With the high beef prices, did not consumers
13 turn to the consumption of cheddar cheese, to a large extent?

14 A That is correct.

15 Q And did that have anything to do with the extent
16 of imports?

17 A Well, had the imports not come in in the quantities
18 that they came I am sure we would have had much higher cheese
19 prices. What it did was basically to prevent cheese prices
20 from rising higher than they would have otherwise.

21 Q And then we would have a greater distortion among
22 the products if the government did not permit the importation
23 of cheese; is that correct?

24 A I believe that's correct, yes.

25 Q And that is not what we would want?

1 A I don't understand the relevance of that question.

2 Q Well, the disparity between the prices.

3 A You are talking about product prices in the market-
4 place, and we want uniform prices to farmers, and I don't
5 see the relevance of the question.

6 Q Let's turn to the second government action to which
7 you refer. That is the relative pricing under the Commodity
8 Support Program of cheese and butter and powder. That is
9 one of the actions of the government which you believe brought
10 about the disparity of prices; is that correct?

11 A That is correct.

12 Q And there will be a new pricing formula, presumably,
13 on April 1st next; is that correct?

14 A Some time between now and April 1st, yes.

15 Q So it is not likely that the disparity between the
16 products can be corrected on the Commodity Support Program;
17 is that correct?

18 A No, it cannot be corrected by that action. Even
19 if the Secretary goes to 90 percent of parity he will be far
20 below the market prices on cheese and powder, and he cannot
21 correct it by that action.

22 Q But he can set separate support prices for cheese
23 in contrast to butter and powder. So that the disparity be-
24 tween them can be lessened; can it not?

25 A Yes. But not in a satisfactory manner.

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1 Q Are you familiar with the components of the Minne-
2 sota-Wisconsin Price Series?

3 A No, I am not familiar with the components.

4 Q Yet you are advocating its exclusive use for Class II
5 pricing; is that correct?

6 A That is correct.

7 Q Even though you do not know whether reliably and
8 validly it reflects the value of manufactured milk?

9 A Oh, I believe it does do that. I think it is a
10 reliable estimate of the manufactured value for manufactured
11 milk.

12 Q How can you come to that conclusion if you do not
13 know whether the proceeds of the sale of fluid milk are in-
14 cluded?

15 MR. COPELAND: Your Honor, I am going to offer an
16 objection.

17 MR. COCHRAN: We are getting to the point of argument
18 The other thing we are trying to do here is settle the quota
19 program and settle the import program. They are not at issue
20 here. Nothing can be done here to change that. I think we
21 are unduly prolonging this hearing with irrelevant matters.

22 MR. HAMMERMAN: May I be heard, Your Honor?

23 JUDGE McALPIN: Yes, you may.

24 MR. HAMMERMAN: I am alluding only to the statements
25 made in the direct statement. The witness himself made

1 reference to Class I pricing, while Class I pricing is not
2 under discussion at this hearing. I heard no objection to
3 that. I am certainly not going as far afield as the witness
4 did when I am alluding to the use of a price series which the
5 witness advocates.

6 And asking him whether he is familiar with how it
7 is composed.

8 MR. COPELAND: Your Honor, I think Dr. Hand has, to
9 the extent he can, answered the questions which Mr. Hammerman
10 has presented on this line. We are all familiar with this
11 problem, with respect to the Minnesota-Wisconsin Price Series.

12 I think this is turning into argumentation. I would
13 ask Your Honor to rule that we move along with relevant ques-
14 tions.

15 JUDGE McALPIN: Gentlemen, I am going to sustain the
16 objections. I want to indicate, gentlemen, that every state-
17 ment that may be made in a direct presentation isn't necessarily
18 going to be subject to cross-examination.

19 I say that in all sincerity, because I cannot control
20 what a witness says on direct. But I can control the extent
21 of cross-examination, and it has to be relevant and material
22 to the issues in this hearing.

23 And you will be held to that. Now I am not going to
24 be the complete arbiter of that, because I don't claim to
25 have the expertise in this area that the agency people or you

1 have.

2 But when objections are raised that challenge the
3 relevance of a particular line of procedure, unless that
4 relevance can be defended, I am going to rule it irrelevant
5 in connection with what knowledge I do have of it.

6 And with reference to the issues that are set out
7 in the Notice of Hearing. Now, I agree that there may be
8 some relevance of imports in this case to the butter-powder
9 snubber. But I think we have pursued it far enough at this
10 point, and let's proceed now with some other line of question-
11 ing, because we aren't going to have a hearing on imports.

12 And we aren't going to have a hearing on the content
13 of the Minnesota-Wisconsin Series pricing. That may be the
14 basis, but we are not going to try to analyze why the govern-
15 ment has arrived at that as a basic consideration in pricing.

16 It may come up at another hearing.

17 MR. HAMMERMAN: While I will, of course, obey Your
18 Honor's ruling and make no further reference to the questions
19 that I have asked previously of this witness, I would like to
20 state my objection to your statement, Your Honor, that we
21 are not concerned --

22 JUDGE McALPIN: Mr. Hammerman, any ruling I make you
23 have an automatic exception and you can argue it in your brief
24 but don't argue it here.

25 MR. HAMMERMAN: Thank you.

1 BY MR. HAMMERMAN:

2 Q One more thing, Dr. Hand. I assume from your state-
3 ments that you are in favor of uniform pricing for manufactured
4 products, both within orders and with unregulated milk; is that
5 correct?

6 A I do not propose an extension of orders to gather
7 in the unregulated milk. I think you do have some competitive
8 conditions which have relevance on pricing of different milk
9 in different locations which must be considered, and I don't
10 advocate uniform pricing as a total end unto itself.

11 Q But if I were to eliminate from my question the un-
12 regulated milk and limit my question only to uniform pricing
13 for manufactured milk within orders, particularly within areas
14 adjoining each other, would you agree with me there should be
15 uniformity?

16 A I think it should reflect the conditions that have
17 bearing on the value of the milk in that particular market,
18 and they should be as uniform as contributes to orders' mar-
19 kets; that is correct.

20 Q And if one order has a price manufactured milk, which
21 is an f.o.b price and the other an f.o.b. farm price and the
22 prices announced are about the same, would you suggest that
23 we have uniformity there?

24 A I would suggest that that's about it, between those
25 two markets. I don't know whether there is uniformity or not.

1 It depends on many other conditions, other than what you have
2 just stated.

3 MR. HAMMERMAN: That's all I have.

4 JUDGE McALPIN: It is now ten minutes of eleven.

5 Let's take a recess for ten minutes.

6 (Whereupon, a short recess was taken).

7 JUDGE McALPIN: Gentlemen, this hearing is back on
8 the record. We will continue with the cross-examination of
9 Dr. Band. Mr. Gehling.

10 MR. GEHLING: First, Your Honor, I would like to
11 give official notice of a government publication or ask that
12 official notice be taken of a publication entitled, "Summary
13 of Major Provisions in the Federal Milk Marketing Orders"
14 dated January 1, 1973, published annually by the Dairy Division
15 of the Agricultural Marketing Service, U.S. Department of
16 Agriculture, Washington, D.C.

17 It is for the purpose of reference to Table 16 of
18 that publication. Table 16 being pricing factors used for
19 surplus Class pricing in Federal Milk Orders as of January 1,
20 1973.

21 JUDGE McALPIN: What page is that?

22 MR. GEHLING: It begins on Page 57.

23 JUDGE McALPIN: All right. Let the record show
24 that official notice will be taken of the said publication,
25 with particular reference to Table 16. Do you have any

1 cross-examination, Mr. Gehling?

2 MR. GEHLING: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. GEHLING:

5 Q This particular table, within this particular Table
6 16, it indicates in the respective Orders where there now
7 exists actions, as we commonly refer to them, for the Class II
8 or lower class pricing under various Orders in the country.
9 I particularly want to refer to the Orders you testified for
10 in light of the prior questions of cross-examiners, regarding
11 the validity of the Minnesota-Wisconsin Series, or any make-up
12 of that.

13 I guess we could take them in aggregate. You referred
14 in your testimony to the New York-New Jersey Order, the
15 Connecticut Federal Order, the Mid-Atlantic Order, and --

16 A Boston.

17 Q Right. With regard to those four Orders for the
18 lower class price, is it not true that you now have an option
19 between the M-W Series price and the butter-powder formula,
20 whichever is the lower?

21 A That is correct.

22 Q Now, referring to your testimony and your table
23 showing the comparison between the butter-powder price and
24 the Minnesota-Wisconsin, let us take, for example, 1973 which
25 is the last column of Table 1 of your exhibit, Exhibit X-12.

1 Could you explain what peculiarities the particular
2 Orders that you are referring to in your testimony may have
3 regarding the option of the M-W Series Price or the butter-
4 powder price, whichever is lower?

5 A Each of the Orders does have a seasonal factor which
6 is not portrayed in Table 1 of Exhibit X-12. This is the
7 formula price itself, prior to the application of seasonal
8 adjustment factor.

9 So this does not show the actual effect of Class II
10 pricing in any of the months.

11 Q The next question I would have, because of those
12 peculiarities, though, there were certain months when the M-W
13 price, this past year, 1973, was actually the Class II price
14 that you are testifying toward?

15 A Yes. It was the lowest price in nine of the 12
16 months, or the lower price in nine of the 12 months.

17 Q Right. So, in effect, the Minnesota-Wisconsin series
18 price was the effective Class II price in those Orders; is
19 that what you are saying?

20 A That is correct.

21 Q So that regarding the prior cross-examination or
22 questions on the validity or the so-called validity of the
23 M-W Series Price, you have already had that situation occur
24 in the past; is that not correct, as you previously just said?

25 A Yes, that is correct.

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1 Q Is it also not true that your basic formula price
2 in your Order that you have testified toward is actually the
3 Minnesota-Wisconsin Series Price and is used as the floor for
4 separating Class II prices under the same Orders?

5 A It is used as a mover, not as a floor.

6 Q Excuse me, as a basic formula for adding your
7 Class I differential toward to arrive at Class I parity.

8 A That is correct.

9 MR. GEHLING: That's all.

10 JUDGE McALPIN: Mr. Smith.

11 CROSS-EXAMINATION

12 BY MR. SMITH:

13 Q Dr. Hand, there is one aspect of the proposal, as I
14 read it in the hearing notice, that I find no reference to
15 in your testimony. Am I correct that your proposal, as it
16 appears in the Hearing Notice, would have the effect of elimin-
17 ating the present seasonal differentials?

18 A That is correct.

19 Q And you still favor that?

20 A For this emergency action, that is correct.

21 Q Referring again to Table 1 of Exhibit X-12, and I
22 am looking at the change that took place between September
23 and October of last year, '73, I call your attention to the
24 fact that in September these figures would indicate that the
25 butter-powder formula was 33 cents higher than

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1 Minnesota-Wisconsin.

2 A That is correct.

3 Q And then in convergence No. 1 it was 47 cents less?

4 A That is correct.

5 Q My question is, first, referring to the relationship
6 of change between September and November and October for the
7 prior year in 1972, there is very little change.

8 A In 1972 they each showed a seasonal increase, that
9 is correct, from September to October.

10 Q And in 1971 there was the same relationship in both
11 months; was there not?

12 A That is correct. They each showed a one cent
13 decline.

14 Q Well, to complete it, in 1970 you went from plus
15 two cents in favor of butter and powder in September to 10
16 cents less in October.

17 A That is correct.

18 Q In view of the very sharp contrast in the change in
19 relationship from September to October, in 1973, compared to
20 the very little change in the previous three years, my question
21 is, do you have any views or can you explain the cause or
22 causes of that very large change in the relationship between
23 butter-powder and Minnesota-Wisconsin Series from September to
24 October last year?

25 A It was due, principally, to the weakening in the

1 butter market, due to the anticipation of imports affecting
2 the supply and also the importation of powder at about that
3 time. Of course, the cheese price had been improving since
4 I believe the meat industry had been on a freeze and the dairy
5 industry had also been frozen, during much of the summer.

6 This was a response to those economic controls that
7 were imposed at that time.

8 Q Along that line, referring back cross-wise to the
9 middle set of figures, the Minnesota-Wisconsin Price, and
10 taking note of the fact that in September, 1973, it was \$6.91
11 and then went up to \$7.49 in October, would you say that the
12 sharp drop in the price of butter in October did not appear
13 to keep the Minnesota-Wisconsin Price from going up that much?

14 A That is correct.

15 MR. SMITH: That's all.

16 JUDGE McALPIN: Further questions? Mr. Lawler.

17 CROSS-EXAMINATION

18 BY MR. LAWLER:

19 Q Dr. Hand, you mentioned that there is a butter-powder
20 plant within the Pennmarva organization. Is that Laurel,
21 Maryland?

22 A Yes.

23 Q And what nature of manufacturing do you do there?
24 Is this a balancing plant?

25 A Yes, it is a balancing plant for the entire market.

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1 In addition, of course, there is condensed ice cream mix and
2 other products made at the plant, other than butter and powder.

3 Q What do you mean by balancing?

4 A Well, the Laurel plant operates in large measure when
5 milk is in short supply on weekends. It stands ready to handle
6 the milk of at least members of Pennmarva, plus others in the
7 market on almost all occasions.

8 Q Could you give me a rough estimate as to the volumes
9 of milk handled at Laurel on balances?

10 A A rough estimate would vary from approximately 25
11 million in a short month to over 60 million pounds in a long
12 month of the year, to indicate the balancing nature. There
13 are days, Wednesday and Thursday, when the plant may receive
14 virtually no milk to upwards of two plus million pounds on a
15 Saturday and Sunday.

16 Q What percent of your volume would be butter and
17 powder?

18 A I don't know, specifically. That varies from year
19 to year and from time to time. I don't know.

20 Q Who are your sales managers of this butter and
21 powder.

22 A The commercial channels, by and large. I don't know
23 any of the customers.

24 Q Do you use CCC to any extent in purchasing?

25 A Not recently, no, nor has anyone else.

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1 MR. LAWLER: No more questions.

2 JUDGE McALPIN: Further questions? Yes, sir.

3 MR. MILLER: My name is Harvey Miller. I am Presi-
4 dent of the Proprietary handlers, concerned in the groups
5 represented by Mr. Hammerman. We operate in Order 2.

6 CROSS-EXAMINATION

7 BY MR. MILLER:

8 Q Dr. Hand, you make in your prepared statement two
9 points that I find difficult in reconciling with each other.
10 On Page 2 in the first paragraph you indicate that the Class
11 II price appears to be depressed because of the fact that
12 imports caused a reduction in the market price of butter.

13 Is that a substantial representation of the point that
14 you are making?

15 A Yes, that actually occurred. That is correct.

16 Q On Page 4 you make the point that the prices of the
17 imports are increasing, and I would conclude from that that
18 the likelihood of this continuing disparity between our
19 Class II price based on the snubber calculation is going to
20 close into a much smaller difference from the Minnesota-Wis-
21 consin price that we have been experiencing; is that true?

22 A No, that is not a correct prediction. What I am
23 saying is that since in large measure the quantities that had
24 been imported is being pretty well worked off the market,
25 prices are starting to improve.

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1 Q Do you mean prices of the imports?

2 A Prices of the domestic product, which is the same
3 as pricing of the imports in the context that I used it there.
4 The domestic price of butter is starting to strengthen, and
5 domestic price of powder has been increasing.

6 I doubt, though, that it is going to increase enough
7 to eliminate a tremendous amount of disparity between the
8 Minnesota-Wisconsin price and the butter-powder formula in
9 the near future. Secondly, we have no assurance that if it
10 does not start to improve substantially that butter will in-
11 crease 20 cents a pound.

12 That the government would not immediately allow more
13 butter to be imported, which would put us back in the same
14 position we are now in.

15 Q Do you mean when you say prices of imports are in-
16 creasing, do you mean the imports that are already in this
17 country, or the imports that may be brought into this country?

18 A The ones that are already in the country, the value
19 of the product that is already in the country.

20 Q The price of cheddar cheese, you have indicated, I
21 believe, brings more return per hundredweight of milk, that it
22 was made from, than the price of butter and powder made from
23 a hundredweight of milk; is that correct?

24 A I did not indicate that, but that is correct.

25 Q There has been permitted an importation of 100

1 million pounds of cheddar cheese from foreign sources. Are
2 these foreign sources sources that have the ability to make
3 butter and powder?

4 A. I do not know.

5 Q. One of the prime sources admitted to shipment of
6 cheese in this country is New Zealand; is it not?

7 A. That is correct.

8 Q. You know, do you not, that New Zealand has large
9 facilities for the manufacture of butter and powder?

10 A. I know they make butter and powder; that is correct.

11 Q. Does it seem natural to you that an exporter of
12 either cheese or butter and powder would be willing to ship
13 butter and powder to this country at a lower return to its
14 producers in its homeland than the producers would receive if
15 they made cheese instead?

16 A. I do not know.

17 Q. From an academic point of view, how would you answer
18 that?

19 A. I don't know what prompts their export policy. I
20 have no idea of what is behind their machinations.

21 Q. If you were an economist representing a group of
22 producers in that foreign country, you couldn't recommend
23 pricing of butter and powder for export at a lower return,
24 could you?

25 JUDGE McALPIN: Mr. Miller, I am going to rule

1 without objection having been made, I am going to rule that
2 what happens in a foreign country and what motivates them is
3 not germane to this hearing. You may proceed with some other
4 questions.

5 MR. MILLER: I would like to ask the witness a broad,
6 philosophical question.

7 BY MR. MILLER:

8 Q Is it not natural to assume that producers who
9 have control of the manufacture of their milk will exert every
10 effort to see that the products made from the milk that they
11 start with, be they in one form or another form, will exert
12 every effort to see that the return is comparable, regardless
13 of which direction those efforts --

14 MR. COPELAND: If Your Honor please, I would like
15 to interpose an objection at this point. I think we are
16 getting into philosophical discussion here. We are here to
17 elicit facts, and I believe we are going to waste an awful
18 lot of time on this type of question.

19 So I would like to raise an objection at this point.

20 MR. MILLER: Your Honor, this is very important to
21 me as an operator, and I don't want to be pressured or to see
22 the Secretary of Agriculture pressured into an emergency de-
23 cision based on a record of two months of abnormality which I
24 think will correct itself in a very short time.

25 That is the point of my asking these questions.

1 MR. COPELAND: If Your Honor please, Mr. Miller now
2 is trying to offer testimony. Dr. Hand is here for cross-
3 examination with respect to any facts which Mr. Miller may
4 wish to elicit. I will again renew my objection.

5 JUDGE McALPIN: I am going to sustain the objection,
6 Mr. Miller. I don't think that this is necessarily a point
7 in which the Secretary would be interested in Dr. Hand's
8 philosophy.

9 He is interested in the facts. And he is interested
10 in those things which pertain to the issue before us. What
11 Dr. Hand's philosophy might be about what somebody in a foreign
12 country might do and the protection of their producers is
13 one thing.

14 I think the Secretary's problem is to protect the
15 producers in this country. Let's proceed with some other line
16 of questioning, sir.

17 MR. MILLER: Yes, sir.

18 BY MR. MILLER:

19 Q Mr. Hand, in what marketing orders is the preponder-
20 ance of the milk of your association members marketed?

21 A Order 4.

22 Q What is the Class I utilization range in Order 4,
23 please?

24 A During the calendar year 1973 it ranged from 60.6
25 percent in Class I in June to 69.3 percent, Class I, in

1 November, averaging 64.5 for the year.

2 Q Are you familiar with the utilization percentage
3 in Order 2?

4 A Yes, I am.

5 Q Would you say that Order 2 has a lower Class I
6 utilization?

7 A Yes, it does.

8 Q Is the volume of milk in total handled in Order 4
9 to the volume of milk in total handled in Order 2?

10 A No, it is not.

11 Q Order 2 is larger, is it not?

12 A Yes, it is.

13 Q Therefore, in Order 2, with a larger percentage of
14 the total existing in Class II utilization, this represents a
15 much larger total volume of milk in Class II utilization?

16 A Yes, it does.

17 Q You indicated that the market does get cleared, and
18 I assume you were referring to Order 4 market, does get cleared.
19 All the milk gets used, did you not?

20 A Yes.

21 Q The question wasn't asked at that point whether or
22 not operators, your association members included, possibly
23 suffered a loss in order to clear the market, if some of the
24 milk had to be put into butter and powder.

25 A They all showed a profit in 1973.

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1 Q That milk that did end up in butter and powder in
2 order to clear the market, might it not have shown a lower
3 return than the cost of the milk, according to Class II price?

4 A It did not.

5 Q Are you a magician?

6 A No, I am not a magician. I am telling you what
7 the facts are.

8 JUDGE McALPIN: Mr. Miller, please don't argue with
9 the witness. I am cautioning you not to argue with the witness.

10 MR. MILLER: I don't think the witness is being
11 truthfully responsive in his statement. Maybe he misunderstands
12 the question.

13 MR. COPELAND: Just a minute, Your Honor. I am going
14 to raise an objection to any inference that Dr. Hand has
15 given truthful testimony here. I am -- this is out of place.

16 MR. MILLER: I said maybe he misunderstood my ques-
17 tion, and I would like to go over it again.

18 THE WITNESS: I understood the question perfectly, and
19 I want you to know that the Laurel plant made a profit last
20 year on butter and powder.

21 JUDGE McALPIN: All right, gentlemen.

22 BY MR. MILLER:

23 Q Is that because the price calculated in certain
24 months on the basis of the Minnesota-Wisconsin price which
25 was lower than the snubber formula would have produced in

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1 those months?

2 A I don't know.

3 Q On the basis of the snubber calculation existing in
4 December of 1973 as a determinant for the Class II price,
5 could the Laurel Plant have operated at break-even or at a
6 profit in turning any of the other milk into butter and powder?

7 A Based on certain margins --

8 Q If the price in 1973 for Class II milk had been
9 calculated on the basis of the Minnesota-Wisconsin and some
10 of the milk turned into butter and powder, could the Laurel
11 Plant have ended in a break-even or profit return for that
12 milk?

13 A On butter-powder, I doubt it.

14 Q Now, may I ask you if you have a Class II price
15 based on the Minnesota-Wisconsin Price, and that price were to
16 continue, that is an average difference over the disregarded
17 snubber calculation, like the figures show us for November and
18 December 1973, would you be able to clear the market and come
19 out at a break-even or profit return, if some of the milk had
20 to be used in butter or powder in order to clear the market?

21 A I am not certain. It would depend on the market
22 responsibility at the prices requested.

23 Q Whether or not you show a break-even return?

24 A We will offer it as efficiently to make a profit for
25 our members as we can.

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1 Q Is it not true that your members are not required
2 to be paid an officially calculated market administrator blend
3 price? They may be paid more than that price and it is per-
4 fectly legal for them to be paid less than that price; is
5 that correct?

6 A That is correct. They averaged much more by 1973.

7 Q Would the comparative operations, if they resulted
8 in a loss in carrying milk priced on a Minnesota-Wisconsin
9 basis manufactured into butter and powder, would this situation
10 give the volume of milk in Order 4, utilizing the Class II,
11 were as large as it is in Order 2?

12 A We would make more profit.

13 Q The answer that you gave to me seems inconsistent
14 with your previous statement, which I believe was to the ef-
15 fect that --

16 A The higher and lower prices in '73 was my previous
17 statement. If we had more milk we would return more money.

18 Q That isn't the nature of my question. If there
19 was more milk that had to be turned into butter and powder in
20 order to clear the market, then you previously had to utilize
21 under butter and powder to clear the market, and if you had
22 to pay Minnesota-Wisconsin price for that milk, and if it were
23 higher than the snubber calculation, and if you previously
24 were not able to come out at a break-even, would your situation
25 be similar, or if you had this larger amount?

1 A I have answered the question.

2 MR. MILLER: I withdraw.

3 JUDGE McALPIN: Any further questions?

4 MR. MORRIS: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. MORRIS:

7 Q Dr. Hand, in connection with your previous answers
8 you state reasons of seasonality, can you indicate to us
9 at this time what your position is with relation to seasonality
10 factors? Refresh my recollection, if you will.

11 We are currently in a hearing in that hearing are
12 you proposing that the seasonality factor be removed?

13 A We are proposing that the seasonality factor be
14 removed from all products, except the butter-powder. To
15 restate it, we have not proposed the elimination of the season-
16 ality factor from the butter-powder formula, when it is appli-
17 cable.

18 But for the remaining products, there would be no
19 seasonality factor.

20 Q Do you mean that we could move in this hearing to
21 amend Order 4 either way ultimately required by you, would we
22 adopt in Order 4 essentially the proposals that you had as
23 Notice of Hearing proposals originally in the hearing which
24 has been adjourned but which is being considered in Order 4?

25 MR. COCHRAN: Objection, Your Honor. I don't think

1 we can undertake here to try the hearing that will be conducted
2 at some time with respect to Order 4 at a later date. As I
3 understand this witness is here for some emergency relief and
4 with immediate, current situation.

5 If we take the orders under consideration here,
6 producers are losing to the tune of \$270,000 a day. That is
7 the issue here today, and I don't think questions about what
8 he might do or might say at some hearing to come up at a
9 later date on different issues has any relevance here.

10 MR. MORRIS: May I answer that, sir?

11 JUDGE McALPIN: You may.

12 MR. MORRIS: Of course I think Mr. Cochran's state-
13 ment with respect to what producers may or may not do in losing
14 are speculative and in dreamland. With respect to the rele-
15 vance of the comments, what I am trying to be sure I under-
16 stand and have clearly on the record is Dr. Hand's position
17 during the next what I consider short-range period, which
18 goes as far as six months to a year, so that we know how the
19 price proposals are expected to operate.

20 I think without understanding this fundamental
21 concept we really don't understand what he is attempting to
22 accomplish in March or April, and what results he is expected
23 to have. To me it is clearly relevant, and without that kind
24 of testimony in the record, we have no notion of what is
25 desired.

1 JUDGE McALPIN: Mr. Morris, what will go into the
2 record I will determine. Number two, we are certainly not
3 here going to rehear the case up in Pennsylvania, which has
4 already run three weeks.

5 We are not going to rehash it here. Now you have
6 asked your question. You have gotten from Dr. Hand his state-
7 ment with reference to the proposals here, and you correlated
8 it with something that he said in Pennsylvania.

9 Now I am not going to permit and I am going to sus-
10 tain the objection to pursuing what he may say in Pennsylvania
11 and what he may say here, or what he may do six, eight, ten
12 months from now.

13 We are going to limit this hearing to the issues
14 that are presented in the Notice of Hearing, and if there is
15 any overlapping then we are not going to try the case in
16 Pennsylvania. That will have to go undecided until the Pennsyl-
17 vania case is heard and decided on its own.

18 I sustain the objection to any further questioning
19 now on what is going on in Pennsylvania, or what may go on,
20 or what Dr. Hand may say up there. Let's proceed.

21 BY MR. MORRIS:

22 Q Dr. Hand, as of July 1, in order to follow up the
23 program that you are recommending initially here, how or what
24 is your opinion on the way the Class II and double class formula
25 necessary should operate in Order 4?

1 A. That the Minnesota-Wisconsin price should prevail
2 at that time.

3 Q. That would be then without seasonality of course.
4 That is what you said previously.

5 A. That is correct.

6 Q. Are you saying that in view of your notion, or in
7 view of a belief that the Minnesota-Wisconsin Price Series
8 will be aligned with butter-powder price series, or are you
9 just eliminating that altogether?

10 A. I am saying that with the view that the type of a
11 hearing which would result in a permanent amendment would not
12 be concluded at that time.

13 Q. At this hearing?

14 A. As a result of this hearing or the hearing which is
15 currently in effect or a hearing that may be called in the
16 future.

17 Q. I am taking from your answer that you do envision
18 some period in the future, although it will not be -- say
19 in the butter-powder formula with seasonality might pertain to
20 butter-powder or other products, maybe yes, maybe no. Is that
21 your view?

22 A. Maybe.

23 Q. I mean maybe yes or maybe no on other products.

24 A. Yes.

25 Q. You do see it controlling at some time in the future

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1 butter-powder prices?

2 A If the long-run disparity continues to persist, we
3 will continue with a reflection of the economic conditions
4 which we feel will merit a different type formula.

5 Q The disparity, then, you think the Minnesota-Wiscon-
6 sin is the appropriate pricing mechanism to follow?

7 A It may be. I can't answer that because of the
8 pricing policy that has recently been put into effect, ~~as~~ will
9 be put into effect. I want to analyze that before I answer
10 any questions.

11 Q By pricing quality which will or might be put into
12 effect, do you mean pricing policy as a result of this hearing,
13 or pricing policy with respect to imports and supports?

14 A That, plus the pricing policy announced, for the
15 39 markets.

16 MR. MORRIS: Thank you.

17 JUDGE McALPIN: Anything further? Hearing none,
18 thank you, Dr. Hand.

19 (The witness was excused)

20 JUDGE McALPIN: It is now 11:50. We will recess for
21 lunch and return at 1:30 p.m.

22 (Whereupon, at 11:50 a.m., the hearing was recessed,
23 to reconvene at 1:30 p.m. this same day, Thursday, February 21,
24 1974).

25

1 I graduated from the Stockbridge School of Agriculture
2 ture and the University of Massachusetts in 1939 and have been
3 learning from sometimes painful experiences ever since.

4 We have a family owned Vermont Corporation with one
5 bottling plant which is the largest north of the Greater Boston
6 area.

7 My testimony will be brief and based on the two
8 points of which I am most familiar. Of course, I should add
9 that, naturally, I am speaking on Proposal Number Eleven.

10 The first is that the price of milk to the producer must
11 insure his profit and his courage to invest the tremendous
12 capital necessary for an efficient modern farm unit. Class I
13 prices have risen rapidly, but not as fast as his costs --
14 grain along went up 43 per cent from December, 1972 to December,
15 1973.

16 Any increase in Class II prices would increase his
17 blend prices and level out his increase throughout the 12
18 months. We believe that only higher blend prices will avert
19 empty shelves at supermarkets about October 15, 1974.

20 I speak from experience. In October, '73, we just
21 barely sneaked by and we were buying from two different
22 cooperative organizations. I think they both wanted to take
23 care of us and they just barely did it.

24 The United States are already short of milk for
25 all manufactured dairy products. It is appalling that the

1 Cost of Living Council has refused to allow a farm price of
2 milk increase to insure our own needs of this number one food.

3 It would seem that we should have learned by now
4 the dangers of having to rely on foreign countries for our
5 necessities.

6 The second problem is right at home at our company
7 every day and that is credibility of our industry with the
8 consumer.

9 Since the government's action of raising quota
10 imports on butter and skim powder, the price of butter has
11 depressed the Class II price in Order I and the other north-
12 east orders. I am sure that has kept powder prices from going
13 up.

14 They have gone up, as you all know, but they would
15 have gone up even more if it had not been for the import.

16 In July, 1972 our company made an economic life
17 or death decision to expand our market into northern Vermont,
18 regulated only by the Vermont Milk Control Board. Milk
19 supplies were already tightened with more Class I sales in
20 Order one than at any time since the late '40s.

21 However, who could possibly have forecasted that
22 the Class I price -- city -- would reach 10.92 the same time
23 as an estimated city blend price of 9.52 -- February, 1974.
24 This resulted, and I am just trying to bring out the credibil-
25 ity part. I know retail prices are not a factor in this

1 hearing but it does show the credibility.

2 This resulted in a consumer price of 67 cents per half
3 gallon in Area I and a price of 72 cents in Area II, which
4 happens to be in the next town.

5 It is also hard to explain to the consumer why
6 fluid skim milk costs so much more than dry skim milk.

7 I did mean to add, as a further explanation of this
8 decision to expand our sales into northern Vermont; as I
9 testified, Class I supplies were already tightening and the
10 gap between Class I and blend was narrowing sufficiently
11 to allow us to compete with these unregulated bottlers of milk
12 to the north of us.

13 Sales of all types of hard cheese increased approxi-
14 mately 11 per cent last year while cheese prices were at their
15 highest level in history. We believe that consumers still
16 appreciate all milk products at whatever price is necessary to
17 insure an adequate supply.

18 It is the price of fresh fluid whole milk that
19 seems to arouse the most emotion of all prices in the super-
20 market. Nearly the full time activity of our salesmen has been
21 utilized in explaining the monthly increases in consumer prices
22 during the last eight months.

23 The Federal Order program has worked well for 37
24 years since the inception of Order Number One. However, when
25 political expediency interferes, as it did in the fall of 1973,

1 then the cooperatives and producer organizations must act for
2 their own protection.

3 The "Super Pool" premiums in October, 1973 -- this
4 is in area one that I am talking about, now -- came through
5 in time to keep producers from complete discouragement.

6 "Super Pool" premiums are hard to administrate and expensive to
7 collect.

8 Our little state of Vermont -- just over 400,000
9 people -- is most concerned about our declining per capita
10 income. Dairy farming is still one third of our whole economy
11 in Vermont.

12 If farm prices were higher, their effect on all
13 agribusiness would lift our whole state more than another IBM
14 plant, plus the excellent one we have already.

15 I have enclosed a reprint from the Farm Journal show-
16 ing what a farmer can do if given a profit incentive.

17 Another item attached is a copy of the milk prices
18 as set by the Vermont Control Board. As I say, just to further
19 explain that credibility point, elimination of the butter pow-
20 der formula price provision of 1001.61 (b) resulting in higher
21 blend prices to the producer is in the best interests of the
22 producer, the handler and the consumer.

23 I would like to point out --

24 Could this be accepted as our one exhibit, Your
25 Honor?

1 JUDGE: Since you are not represented, Mr. Aldrich,
2 I would suggest that, if you have twelve copies of this, you
3 make your statement with the attachments an exhibit.

4 MR. PALMER: Your Honor, if I might, I am really
5 not too concerned about this item coming in but it has been
6 a policy, I think, with respect to these people's articles
7 and the like that, generally, we do not accept them in
8 evidence just because of the problem of cross examination and
9 not in the nature of standard text or anything such as that.

10 JUDGE: This, Mr. Palmer, is not a news release.
11 This is something that I understand has been published in the
12 Farm Journal.

13 We could put the whole Farm Journal in or we could
14 put the article to which Mr. Aldrich wants to refer and has
15 referred. There is a difference between that and my ruling
16 on news releases.

17 MR. PALMER: Yes, sir.

18 JUDGE: Unless there are other objections, I would
19 be inclined to mark his statement with the attachment as
20 an exhibit and make it a part of the record which would then
21 make it unnecessary for him to read all of this as part of
22 his statement.

23 MR. PALMER: Yes, sir.

24 JUDGE: Is that what you desire to do, Mr. Aldrich?

25 THE WITNESS: Yes, sir.

1 JUDGE: Do you want to talk some more from the
2 chart?

3 THE WITNESS: Just to explain the farm price
4 chart very briefly.

5 As I testified, we made our decision on what was
6 to enter the unregulated market on what appeared to be almost
7 a sure bet.

8 As this chart shows, between July and August of
9 '72, utilization went up very rapidly and every indication
10 was that it was that the blend price would continue to be
11 closer to the class I price.

12 You can see how it is hard for small companies to
13 make decisions when even expert economists may not always be
14 right.

15 This concludes my testimony and I would move that
16 this be entirely entered as one exhibit.

17 JUDGE: Let the record show that the statement of
18 Mr. Aldrich, with the attachment, is marked for identification
19 as Exhibit X-13.

20 Without objection, it is now received in evidence.

21 Exhibit X-13 was marked for
22 identification and received in
23 evidence.

24 JUDGE: Cross Examination.

25 Mr. Cochran?

CROSS EXAMINATION

BY MR. COCHRAN:

Q Mr. Aldrich, I understand the change in the Order you want to accomplish is the elimination of the butter-powder formula as a pricing mechanism; is that correct?

A That is right.

Q Now, throughout this hearing, there has been some considerable support for bringing about that change in the most expeditious manner available which would be true of the suspension procedure, rather than through the amendment procedure.

Do you request that the affect of this change that you are advocating be accomplished and made effective in the most expeditious manner available?

A Yes, I would. March first, if possible.

MR. COCHRAN: Thank you.

JUDGE: Mr. Morris.

BY MR. MORRIS:

Q Sir, I wonder if you could tell us what the utilization in your bottling plant is?

A It averages around 94 per cent Class I.

Q What is the main percentage?

A Fluid bottled milk.

Q I am sorry. I misled to you.

What is the remaining 6 per cent?

1 A The remaining 6 per cent, we do manufacture some
2 soft shake mixes. We ship about a tankload of dairy cream
3 a week, mostly to ice cream plants.

4 Q Do I understand the situation correctly; that you
5 are regulated by Order One?

6 A Yes.

7 We have sales in unregulated areas.

8 Q And the area in Vermont to which you have extended
9 your operations is an unregulated area; am I correct?

10 A That is correct.

11 Q That is Vermont Area One.

12 A Yes.

13 Q Has Vermont set a producer price in that area?

14 A Yes, they do. They use the city blend.

15 Q That is somewhat lower than the pay price that
16 you are paying for Class One?

17 A Quite substantially; yes.

18 Q And you are going to take the unfortunate proposi-
19 tion that those dealers unregulated by Order One, selling in
20 Vermont Area One, are at a competitive advantage in terms of
21 breeding costs on your routes?

22 A That is right.

23 Q You don't market any butter or powder, do you?

24 A No, we do not.

25 Q Do you manufacture ice cream yourself?

1 A No.

2 JUDGE: Any further questions?

3 Mr. Oman.

4 BY MR. OMAN:

5 Q Mr. Aldrich, can you tell me where you obtain most
6 of your milk for your plant?

7 A About two-thirds of our milk is from Yankee Milk,
8 Incorporated, the Yankee Milk Coop. The other third is from
9 NFO and that is further broken down; about one-third direct
10 from Yankee Producers, one-third from Yankee Reload Station,
11 and one-third from NFO Reload Station.

12 Q Are these coops required to do any balancing, pro-
13 viding balancing services for your supply?

14 A A very minimum.

15 We take in milk seven days a week from both the
16 reload stations and the producers directly and the orders
17 vary very little from day to day or week to week but, natur-
18 ally, there is a little balancing.

19 MR. OMAN: Thank you.

20 JUDGE: Are there any further questions?

21 MR. PALMER: Yes, if I may.

22 BY MR. PALMER:

23 Q I would just like to be clear how your operation
24 would be benefited by the elimination of the butter-powder
25 snubber.

1 Am I correct that, by eliminating the butter-powder
2 snubber, the Class II price would be raised and more milk
3 would be made available to you as a Class I utilizer?

4 A No.

5 It would raise the Order One blend price on which
6 the Vermont Control Board bases the area one state control.

7 Q I see.

8 Then, this would mean --

9 How would this help you in your competitive situa-
10 tion?

11 A Then there is an automatic fixed markup built into
12 the Vermont milk control board over this city blend. That
13 determines the resale pricing.

14 That would automatically raise the selling price
15 of milk in Area One all through northern Vermont.

16 Q You are, of course, responsible to Class I price
17 would be unchanged but your resale prices would be increased
18 as a result?

19 A That is right.

20 MR. PALMER: Thank you, sir.

21 JUDGE: Further questions?

22 Mr. Miller.

23 BY MR. MILLER:

24 Q I have read the enclosure attached to your pre-
25 pared statement which is the story of a milk producer named

1 Mr. Ruesink and his endeavor to accomplish what appears to me
2 to be an improvement in his earnings after making an addi-
3 tional capital investment in his farming facility. That is
4 the purport of this article; is it not?

5 A Yes, it is.

6 Q I draw your attention to the last paragraph of the
7 first page of this article and I read to you these words:

8 "The 132 tillable acres on the place and the 70-cow
9 dairy have done oaky -- yielded 10 per cent to 20 per cent on
10 investment during the 1960s." But the old dairy

11 I ask you if you understand from this article that
12 Mr. Ruesink made an additional investment in order to improve
13 that return of ten to 20 per cent on his previous investment?

14 A That is partially true but one point of the article
15 is that we do not know what this added investment did to his
16 return on investment. So, unless he has courage, unless he
17 can show a pro forma statement to a bank of additional income
18 and some semblance of good pricing, he certainly could not
19 have borrowed this \$300,000.

20 Q The point that I want to ask you is, it is quite
21 clear from this article that Mr. Ruesink was not near the
22 stage of bankruptcy before making his new reinvestment.

23 A Perhaps not, financially, but -- interested in farm-
24 ing, a modern setup.

25 MR. MILLER: I have nothing more, sir.

1 JUDGE: Further questions?

2 Hearing none, thank you, Mr. Aldrich.

3 Whereupon, the witness, Roland W.
4 Aldrich, was excused.

5 JUDGE: Why don't we, at this point, take a five
6 minute recess.

7 Whereupon,

8 The hearing was recessed for a short period.

9 JUDGE: Gentlemen, the hearing is reconvened. Back
10 on the record.

11 We are now ready to hear from the proponents of
12 Proposal Number Five, Eastern Milk Producers' Cooperative
13 Association, Inc.

14 Whereupon,

15 JOSEPH C. MATHIS

16 was called as a witness and, having been first duly sworn by
17 Judge McAlpin, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MICALE:

20 Q Would the witness state his name and address,
21 please?

22 A My name is Joseph C. Mathis. I am the Economist
23 for Eastern Milk Producers' Cooperative Association, I-n-c.

24 You mentioned my name previously in these proceed-
25 ings. You entered my appearance, I should say, previously so

1 you have my address.

2 Q Mr. Mathis, could you give us a brief outline of
3 your educational and professional background?

4 A Yes.

5 I graduated from Cornell University in 1958. I
6 have a Bachelor of Science degree in Dairy Science. I con-
7 tinued there in Agriculture Economics with a concentration in
8 Dairy Marketing and I have a minor in Accounting in the graduate
9 school of Business Administration.

10 From 19 -- From October of 1960 through March of
11 1968, I worked for the U. S. Department of Agriculture in the
12 Office of the Market Administrator for the Connecticut Market
13 as an Economist and head of the Statistical and Public Informa-
14 tion Division.

15 Upon leaving there, in March of '68, I joined what
16 was then called the Office of Milk Industry in the State of
17 New Jersey as an Economist and, in December of that year, I
18 was appointed the Director of that Program and served in that
19 capacity until August one, 1970 when I joined Eastern.

20 During my employment as Acting Director of the
21 Division of Dairy Industry which, by the way, was successor
22 to the Office of Milk Industry, I participated in several
23 hearings, both quasi-legislative and quasi-judicial and con-
24 ducted several of them, as well.

25 During my career, I have testified numerous times

1 in Federal Order Program and in state order matters, as well;
2 both in the State of Pennsylvania and Kentucky.

3 Q Mr. Mathis, I assume you will be giving testimony
4 in support of Proposal Number Five?

5 A Yes, I will.

6 MR. MICALE: Your Honor, Mr. Mathis has prepared a
7 statement consisting of 17 typewritten pages. Attached to it
8 are twelve table and one figure graph which support the state-
9 ment which he will soon read into the record.

10 I would like to have marked for identification what
11 is labelled as Figure Number One and Tables Number One through
12 Twelve, consecutively. I will offer these into evidence at
13 the conclusion of Mr. Mathis' testimony.

14 JUDGE: Let the record show that the attachments
15 to the prepared statement of Dr. Mathis, as Figure Number One
16 and Tables One through Twelve, are cumulatively marked as
17 Exhibit X-14, for identification.

18 References to the pages of it may be made by re-
19 ferring to Figure Number One or to Table Number One, Two,
20 Three, et cetera.

21 Exhibit Number X-14 was marked
22 for identification.

23 BY MR. MICALE:

24 Q Mr. Mathis wants to make a statement at this time

25 A The testimony I will offer at this time is made on

1 behalf of Eastern Milk Producers' Cooperative Association, Inc.
2 and the following cooperative associations affiliated there-
3 with: Allied Federated Coops, Inc.; Amsterdam-Fort Hunter
4 Dairy Cooperative, Inc.; Fly Creek Valley Cooperative, Inc.;
5 Inter-Counties Bulk Milk Producers' Cooperative, Inc.; North-
6 ern Farms Cooperative, Inc.; and Sussex County Cooperative
7 Milk Producers' Association.

8 These cooperatives, in the aggregate, constitute a
9 regional association of approximately 8,000 dairy farmers
10 residing in the States of New York, Pennsylvania, Vermont, New
11 Hampshire, New Jersey, Delaware, and Maryland and supplying
12 milk to handlers regulated under the New York-New Jersey,
13 Middle Atlantic, Boston Regional, Connecticut or the Eastern
14 Ohio-Western Pennsylvania Federal Milk Marketing Order.

15 Statement of Position: Background -- On November
16 16, 1973, Eastern et al petitioned the U. S. Secretary of
17 Agriculture and officials of the States of New York and New
18 Jersey to immediately suspend the alternate butter-powder
19 formula price from the reserve milk pricing provisions of the
20 five Federal orders in the Northeast in which said cooperatives
21 market their members' milk -- seven CFR, Parts 1001, 1002,
22 1004, 1015, and 1036.

23 Corresponding suspensions also were requested for
24 the milk marketing orders promulgated by the States of New
25 York and New Jersey concurrently with Federal Order Numbers

1 two and four -- Official Order Number 126 for New York and
2 Official Order Numbers 57-3 and 63-1 for New Jersey.

3 It was also urged that comparable suspensions
4 should be effectuated in any other Federal orders as deemed
5 necessary by the Secretary to carry out the declared policy of
6 the Agricultural Marketing Agreement Act of 1937, as amended,
7 and to assure orderly marketing in the Federal milk marketing
8 order system.

9 The aforesaid petition was accompanied by a
10 detailed statement of purpose, effect, and the justification
11 for such action.

12 On December 10, 1973, nearly a month after the peti-
13 tion was filed, we received a letter from Assistant Secretary
14 Clayton Yeutter denying said petition on the grounds that its
15 adoption would disturb the inter-order alignment of reserve
16 milk prices.

17 Upon receipt of letters dated February 4, 1974
18 from the Market Administrators of the aforesaid Federal orders
19 noting the Department's consideration of calling an emergency
20 hearing to consider this matter and inviting proposals on this
21 issue, Eastern et al immediately dispatched such a proposal.

22 That proposal appears as Proposal Number Five in
23 the Notice of Hearing in these proceedings -- 39 FR 5642,
24 February 14, 1974 -- Exhibit Number One -- and we hereby urge
25 its immediate adoption.

1 We also urge corresponding amendments to any or all
2 of the other orders under consideration in these proceedings
3 for the reasons stated in the preceding paragraph.

4 Purpose -- The obvious purpose of Proposal Number
5 Five is to cause Class II prices -- Class III prices under
6 Order Number 36 -- established pursuant to the aforesaid
7 Federal and State milk marketing orders to be based on the
8 basic formula price for the current month in each month except
9 during the flush production months of April, May, and June of
10 each year.

11 During the latter months, reserve milk prices would
12 be based upon either the basic formula price of the butter-
13 powder formula price, whichever is the lower in the particular
14 month.

15 Effect -- The adoption of Proposal Number Five
16 would cause the prices payable for reserve milk pursuant to
17 the aforesaid orders to be more closely aligned with the
18 prices paid for manufacturing grade milk in the midwest, as
19 represented by the Minnesota-Wisconsin pay price series --
20 the basic formula price under the orders.

21 The only exception to this general rule would be
22 for the months of April, May, and June of each year when the
23 butter-powder formula would be retained as an alternative
24 price determinant and used as such if it should be lower than
25 the basic formula price.

1 The retention of this alternate mover in the re-
2 serve milk pricing provisions of the Federal orders in the
3 northeast is deemed advisable to assure the availability of
4 adequate outlets for excess supplies on these markets during
5 the flush production months.

6 As well be shown later herein, the butter-powder
7 formula price has been distorted by artificial depression of
8 the wholesale market prices for butter. Beginning in October,
9 1973 the butter-powder formula price has fallen below the
10 basic formula price by unprecedented and ever-widening
11 amounts.

12 There appears to be no foreseeable correction of
13 this distortion in the months ahead. Hence, the use of this
14 alternative pricing factor -- except in the months of April,
15 May, and June -- should be terminated to prevent continued de-
16 pression of the prices for reserve class milk and this of
17 uniform prices payable to producers.

18 The butter-powder formula price as a factor in
19 pricing reserve milk -- background -- Of the 62 Federal milk
20 marketing orders currently in effect, only 30 have butter-
21 powder formula price provisions therein; of the latter, eight
22 are identical to those in the five orders previously identified
23 herein.

24 The majority -- 32 -- of the orders have no such
25 provisions contained therein.

1 The butter-powder formula price provisions here
2 under consideration were added to the reserve milk pricing pro-
3 visions of Federal Order Numbers One, Two, and 15 -- for the
4 New England and New York-New Jersey markets -- and of Order
5 Numbers Three, Four, and 16 -- predecessors to the Middle
6 Atlantic Order -- by amendments thereto, effective July 1,
7 1968 -- 33 FR 8199, June 1, 1968.

8 Similar provisions have been a part of Order Number
9 36 since its effectuation on July 1, 1968 and were part of its
10 predecessors -- Order Numbers eight, 48, and 36 -- for several
11 years prior thereto. Said provisions of current Order Number
12 36 were made identical with those of other Federal orders in
13 the northeast by an amendment effective May 1, 1969 -- 34 FR
14 7066, April 30, 1969.

15 The butter-powder formula price provisions were
16 added to the northeast orders to assure that the annual price
17 level for reserve milk in this region would not rise above
18 a fixed margin under the market value of butter and non-fat
19 dry milk powder. They were intended to guarantee that handlers
20 would have no less than a 48 cent operating margin in process-
21 ing butter and non-fat dry milk powder -- 33 FR 7184, May 15,
22 1968.

23 Historical Performance -- Since mid-1968, the
24 butter-powder formula price has been the basis for establish-
25 ing reserve milk prices in the aforesaid orders for 40 of the

1 73 months -- 55 per cent of the months to date, through
2 January, 1974 -- Figure Number One and Table Number One.

3 It was the price determinant for five of the six
4 months after its effectuation in 1968; it was the lower of the
5 two series' in all 12 months of 1969, in seven months of 1970,
6 four months of 1971, and in nine months of 1972.

7 From December, 1972 until October, 1973 the butter-
8 powder formula price had no effect on reserve milk prices, in
9 spite of the abrupt upward movement in the basic formula price
10 beginning in July, 1973.

11 Throughout its use as an alternative pricing factor
12 in establishing reserve milk prices in the five Federal orders
13 in the northeast, the butter-powder formula price never fell
14 more than 35 cents below the basic formula price in the corres-
15 ponding month -- until October, 1973 -- and that occurred in
16 the fall of 1969 -- Table Number Two.

17 The butter-powder formula price averaged five cents
18 below the basic formula price in 1968, 17 cents below in 1969,
19 ten cents below in 1970, was six cents above in 1971, and only
20 two cents below in 1972.

21 The average market prices used in determining the
22 butter-powder formula prices for the years 1968 to date are
23 set forth in Table Number Three attached hereto.

24 Recent Performance -- From December, 1972 through
25 September, 1973 the butter-powder formula price averaged 17

1 cents above the basic formula price. In August and September,
2 1973 the butter-powder formula price exceeded the basic formula
3 price by 36 cents and 33 cents, respectively -- Table Number
4 Two.

5 It could be concluded, therefore, that, because
6 reserve milk prices during the December, 1972 to September,
7 1973 period were determined by the basic formula price, rather
8 than by the butter-powder formula price, gross operating mar-
9 gins available to butter-powder manufacturers under Federal
10 orders utilizing this alternative pricing factor were consider-
11 ably more than the minimum 48 cent margin provided in the
12 butter-powder formula.

13 For the ten months prior to October, 1973 the butter-
14 powder formula prices were held above the basic formula price
15 by continued strength in the market prices for spray-type
16 non-fat dry milk powder. The latter consistently exceeded
17 the applicable support -- CCC -- purchase prices by 5.6 cents
18 a pound or more.

19 Prior to September, 1972 powder prices were con-
20 sistently below support levels -- Table Number Four. In
21 December, 1973 and January, 1974 powder prices exceeded
22 support purchase price levels by 10.6 cents and 13.7 cents a
23 pound, respectively.

24 The average powder price used for January, 1974 in-
25 cluded market quotations through January 25. Since then,

1 weekly price quotations for the Chicago area have risen above
2 the prices prevailing prior thereto.

3 Wholesale prices for extra grade spray, low heat,
4 non-fat dry milk at Chicago were quoted -- midpoints of ranges --
5 at 56.35 cents a pound for the week ending January 31, at 57.85
6 cents a pound for the week ending February 8, and at 59.525
7 cents a pound for the week ending February 15.

8 These quotations indicate continued price strength
9 in the powder market and likely will cause the average price
10 for January 26 to February 25 to advance about two and one-third
11 cents a pound, to about 58.3 cents, from that used in computing
12 the butter-powder formula for January, 1974.

13 From 1968 until mid-1973, the wholesale prices for
14 butter used in computing the butter-powder formula prices
15 hovered on the applicable support -- CCC -- purchase prices --
16 Table Number Five. Since then, and until late January, 1974,
17 the wholesale butter price at Chicago has exceeded the support
18 purchase price as follows: 2.5 cents a pound in July, 17.2
19 cents in August, 25.0 cents in September, 19.4 cents in Octo-
20 ber, 14.1 cents in November, 11.1 cents in December, and 7.6
21 cents in January of this year.

22 The decline in butter prices from September to
23 December, 1973, however, caused an abrupt reversal in the
24 upward trend in the butter-powder formula price and activated
25 it as the price determinant of reserve milk prices for the

1 markets under consideration in these proceedings - Figure
2 Number One and Tables Numbers One and Two. Only continued
3 price strength in the powder market served to halt this down
4 trend in January as butter prices continued to slump.

5 Throughout first half 1973, as noted previously,
6 butter prices hovered barely above support levels --- Table
7 Number Five. Wholesale butter prices rested on the support
8 floor until the price freeze was lifted on certain foods,
9 including dairy products, and processors were permitted to
10 pass through increases in raw product costs to the prices for
11 finished products.

12 This relaxation of price controls occurred on July
13 18, 1973 and wholesale butter prices began to climb almost
14 immediately -- Table Number Six.

15 Wholesale butter prices, 92-score, at Chicago in-
16 creased steadily and peaked at 87 cents a pound on September
17 28, 1973 and held at that level through October Fourth.
18 Rumors that the President would increase or remove import
19 quotas on butter to permit massive amounts of foreign-produced
20 butter onto domestic markets caused butter prices to begin to
21 slide downward.

22 By mid-October, they had declined by about four
23 and one-eighth cents to 82 and seven-eighths cents a pound.

24 Following the public announcement on October 17,
25 1973 that the Cost of Living Council had recommended temporary

1 removal of import quotas on butter and cheese to increase
2 supplies of these products and to hold down their prices,
3 wholesale butter prices at Chicago dropped an additional 12
4 and one-half cents to 70 and three-eighths cents a pound. On
5 October 23, butter prices rose one-eighth of a cent to 70 and
6 one-half cents a pound and then to 70 and three-quarters cents
7 a pound on October 26 -- Table Number Six.

8 This decline in butter prices, 16 and five-eighths
9 cents a pound, during October, 1973 depressed the butter-
10 powder formula price by more than 22 cents a hundredweight.
11 This, coupled with a 58 cent increase in the basic formula
12 price, caused the butter-powder formula price to fall 47 cents
13 below the basic formula price and depress reserve milk prices
14 by the latter amount -- Table Number Two.

15 On November 1, 1973, the President issued Proclama-
16 tion 4253 permitting an additional 56 million pounds of butter
17 and 22.6 million pounds of butter substitutes and butter oil
18 to enter the United States between November 1, and December 31,
19 1973.

20 During November, 1973 butter prices at Chicago held
21 at 70 and three-quarters cents a pound until the ninth when
22 they advanced two cents to 72 and three-quarters cents a pound.
23 They rose again, by four cents, on November 20th, to 76 and
24 three-quarters cents a pound and then to 79 and three-quarters
25 cents on the 23rd.

1 In spite of this rather remarkable price strength,
2 in the face of the threat of price depressing imports, the
3 average price for the month was 75 cents a pound; about four
4 and one-third cents below the average price for October, 1973 --
5 Table Number Six.

6 As a result, the butter-powder formula price de-
7 clined 16 cents from the already depressed October level. This,
8 combined with a 15 cent increase in the basic formula price
9 for November, caused the butter-powder formula price to de-
10 press reserve milk prices by 78 cents a hundredweight --
11 Table Number Two.

12 In December, 1973, butter prices on the Chicago
13 market held at 79 and three quarter cents a pound until the
14 seventh when they dropped by seven and three quarter cents to
15 72 cents a pound. They declined to 69 cents a pound on the
16 14th and then recovered, temporarily, to 70 cents a pound on
17 the 20th.

18 They held at that level until the 27th when they
19 dropped to 69 and one-half cents a pound and held there for the
20 remainder of the month.

21 Because of the erratic movement of prices and the
22 unusually large number of days in which no reports were avail-
23 able, the Department issued an equivalent butter price of
24 71.98 cents a pound for December for use in the Federal order
25 program -- Table Number Six.

1 That price was three cents below the average for
2 November and it dropped the butter-powder formula price an
3 additional five cents. The basic formula price, however, in-
4 creased 30 cents; \$1.13 above the butter-powder formula price
5 for December -- Table Number Two.

6 Butter prices were unsettled for most of January,
7 stabilizing only briefly and at lower levels than before.

8 After settling out at 70 and one-eighth cents a
9 pound from the 22nd through the 28th, they suddenly dropped to
10 61 and seven-eighths cents a pound on the 29th, only fraction-
11 ally above the support level and the lowest they had been
12 since the relaxation of the price freeze on July 18, 1973 --
13 Table Number Six.

14 For the month as a whole, butter prices averaged
15 about 68 and one-half cents a pound, about three and one-half
16 cents below the December, 1973 level. This depressed the
17 butter-powder formula price by about 14.7 cents from its
18 December level.

19 The previously noted three cent increase in powder
20 prices, however, was sufficient to offset the effect of the
21 drop in butter prices and boost the butter-powder formula
22 price for January, 1974 by 11 cents above the December, 1973
23 level.

24 Although this caused a comparable increase in re-
25 serve milk prices, they were \$2.18 a hundredweight below the

1 levels that would have prevailed had they been based on the
2 basic formula price -- Table Number Two.

3 Although butter prices in early February have re-
4 covered somewhat from the last January level, Table Number six,
5 and powder prices, as previous noted, have advanced, the higher
6 butter-powder formula price resulting therefrom likely will
7 continue substantially below the basic formula price for
8 February. Continued price strength in the cheddar cheese
9 market in February signals some further rise in the basic
10 formula price for February, 1974.

11 Use of butter-powder formula price inappropriate
12 under current marketing conditions -- current B-P formula
13 understates actual pay prices -- A comparison of the prices
14 yielded by the butter-powder formula provisions of the five
15 Federal orders in the northeast with the actual prices paid by
16 creameries -- butter and butter by-products plants -- indicates
17 that until October, 1973 the formula price consistently exceed-
18 ed the prices actually paid by creameries -- Table Number Seven.

19 Beginning in October, however, the butter-powder
20 formula provisions yielded prices which understated, by
21 ever-greater amounts, the prices that actually were paid for
22 manufacturing grade milk manufactured into butter and powder.

23 Such comparisons are set forth in Table Number Seven
24 for the two states of Minnesota and Wisconsin separately and
25 together -- weighted by the pounds of product manufactured

1 during the current month in the respective state -- and for
2 the United States as a whole.

3 These comparisons raise serious question as to
4 whether the butter-powder formula prices established by the
5 aforesaid orders even provide a meaningful indicator of the
6 values of milk used to manufacture butter and non-fat dry milk
7 powder, either in the north central states or in the United
8 States as a whole.

9 This reason alone, and there are others, would
10 justify the adoption of Proposal Number Five in these proceed-
11 ings.

12 B-P formula price depressing uniform prices to
13 producers -- The price-depressing impact on uniform prices
14 of using the butter-powder formula price, rather than the
15 basic formula price, in computing reserve milk prices is, of
16 course, a product of the relative quantities -- and proportions --
17 of reserve milk in the pools for the respective markets.

18 A reasonably accurate indication of that impact
19 may be ascertained by multiplying the difference between the
20 butter-powder formula price and the basic formula price for
21 the current month by the proportion of reserve milk in the
22 pool of a particular market for that month.

23 It varies, of course, by the relative proportion of
24 pooled reserve milk in the respective markets in any parti-
25 cular month.

1 Similarly, the dollar value lost to the pool for a
2 particular market may be ascertained by multiplying the differ-
3 ence between the two formula prices by the hundredweight of
4 reserve milk in the pool in the same month.

5 The results of such computations for the five
6 Federal order markets in the northeast, separately and in total,
7 are set forth in Table Number Eight attached hereto.

8 The impact on uniform prices of using the butter-
9 powder formula price for establishing Class II milk prices on
10 the New York-New Jersey market -- the market carrying the
11 greatest quantity of reserve milk -- ranged from 17.6 cents
12 a hundredweight in October, 1973 to 51.5 cents a hundredweight
13 in January this year and averaged 38.1 cents for the four
14 month period.

15 To date, moreover, nearly \$10.7 million has been
16 lost to the New York-New Jersey Pool, and thus to dairy
17 farmers, as a result of activation of the butter-powder
18 formula prices as the determinant of Class II prices.

19 The five markets taken together have lost a total
20 of nearly \$21 million in just the four months since the
21 butter-powder formula price has been the reserve milk pricing
22 factor. This has amounted to a weighted average reduction of
23 nearly 32 cents a hundredweight on uniform prices for the four
24 month period to date.

25 Certainly, such depression of uniform prices to

1 producers at a time when they should be enhanced in the face
2 of a continuing price cost crunch strains at economic logic and
3 credibility for the Federal order system.

4 Moreover, the depression of reserve milk prices
5 since October, except for November, has more than offset the
6 enhancement of uniform prices by increases in Class I prices
7 during that period.

8 This means that, unless the depressing effect on
9 uniform prices of the butter-powder formula prices is eliminated,
10 Class I prices will have to be raised considerably more than
11 anticipated if uniform prices to producers are to be suffi-
12 cient to assure an adequate supply of milk for consumers in
13 the aforesaid markets as required by the Act.

14 Milk supplies for the five markets under considera-
15 tion have declined steadily and at an alarming rate since
16 mid-1972.

17 In September, 1973, for example, receipts from
18 producers were an unprecedented 8.0 per cent below year
19 earlier levels and for 1973, as a whole, were 4.8 per cent
20 below those for 1972 -- Table Number Nine.

21 Preliminary data for January this year indicates
22 that receipts were 3.7 per cent below those of a year ago.

23 The price-cost crunch afflicting dairy agriculture
24 in this region has driven ever increasing numbers of farmers out
25 of business.

1 In December of this past year, there were 2,574, 5.3
2 per cent, fewer producers shipping to the five markets than did
3 so in December, 1972 -- Table Number Nine.

4 In January, 1969, a total of 58,594 producers
5 shipped milk to handlers in the five markets.

6 During December, 1973, in contrast, only 46,135 pro-
7 ducers were supplying these markets. This represents a drop
8 of 12,459 producers, 21.3 per cent, in just the past five
9 years and the downward trend shows no evidence of abating.

10 The exorbitant cost of grain has forced dairymen
11 to more heavily cull their milk cow herds and drastically cur-
12 tail the feeding of grains. The result is a reduction of
13 86,000 head, 3.1 per cent, between December, 1972 and December,
14 1973 in the number of milk cows on farms in the northeast
15 region alone.

16 This was accompanied by a reduction of 1.8 per cent
17 in production per cow in 1973 compared to 1972 -- Table
18 Number Nine.

19 Milk production in the 11 state milkshed serving
20 the five markets in 1973 was 4.3 per cent less than the pre-
21 vious year. Preliminary data for January, 1974 indicates
22 that milk production in this region was down by 3.5 per cent
23 from a year ago.

24 Class I use of producer milk in 1973 declined about
25 one-half the rate of previous years allowing reduced supplies

1 to increase the proportion of Class I milk in the region for
2 the first time in recent history -- Table Number Nine.

3 Preliminary data for January this year indicates
4 that 62.7 per cent of the receipts from producers on the
5 five markets was utilized for Class I purposes; unchanged from
6 the proportion for January, 1973.

7 Clearly, the milk supply situation in this region is
8 serious and the productive capacity of the dairy industry
9 already has been so severely reduced that the ability of the
10 industry to meet market needs in the future is threatened.

11 It should be patently obvious that prices to pro-
12 ducers must increase, not decrease, during this unprecedented
13 period of declining supplies and productive capacity.

14 Such depression of reserve milk prices as have
15 occurred in recent months and as are continuing, at a time when
16 such prices should be increased to encourage full allocation
17 of available supplies for fluid uses, must be prevented.

18 The creation of economic incentives to manufacture
19 butter and powder in fluid milk markets, except during the
20 flush production months, would be economically irrational,
21 administratively irresponsible, and would be contrary to the
22 intent of the orders and the Act under which they are promul-
23 gated.

24 Impact on Handlers -- some fear may be expressed
25 that the elimination of the butter-powder formula price as an

1 alternative factor in pricing reserve milk in the five markets
2 would impose an undue hardship on handlers. Eastern believes
3 that, except for the flush production months, such would not
4 be the case.

5 The quantity of reserve milk associated with the
6 five markets has declined substantially and no longer is the
7 burdensome problem that once prevailed. Total Class II
8 utilization on the five markets declined 2.1 per cent between
9 1971 and 1972 and was 8.2 per cent below the previous year in
10 the first quarter of 1973 -- Table Number Ten.

11 Although comparable data on total Class II --
12 Class III -- utilization is not available for the entire year
13 of 1973 for all five markets, data related to the use of
14 producer milk in reserve classes is available.

15 The latter data indicates that the quantity of re-
16 serve milk on the five markets in 1973 fell about 10.1 per cent
17 below that for 1972, after adjustment for leap year. Compar-
18 able data for the New York-New Jersey market, the largest
19 in the Federal order system, indicates that Class II milk in
20 1973 was 11.7 per cent less than in 1972.

21 This drop is comparable in degree to those in the
22 New England markets set forth on Table Number Ten.

23 As would be expected from the above facts, the
24 quantities of milk used in the manufacture of butter and
25 powder, likewise, are down substantially from previous levels.

1 Unfortunately, data are not available regarding the use of
2 reserve milk in butter and powder manufacturing in each of the
3 five northeastern markets.

4 Such data are available for the New York-New Jersey,
5 Boston Regional, and Eastern Ohio-Western Pennsylvania markets,
6 however, and are summarized on Table 11 attached here.

7 In 1972, nearly 1.5 billion pounds of milk were manu-
8 factured into butter and powder in the three markets. This
9 represents a decline of 18.2 per cent from the quantity so
10 manufactured in 1971 and a decline of 26.8 per cent from the
11 1970 level -- Table Number 11.

12 During the first three months of 1973, the quantity
13 of milk used for manufacturing butter and powder was some 44.2
14 per cent below the quantity so manufactured in first quarter
15 1972. In the Boston Regional market, only 133.6 million pounds
16 of milk were manufactured into butter and non-fat dry milk
17 powder during 1973.

18 This was only half the quantity so utilized in 1972
19 and was only one-third the amount for 1970. The quantity of
20 milk manufactured into butter and powder not only has declined
21 as total Class II milk has declined, but has declined as a per
22 cent thereof.

23 In 1970, milk used in butter and powder in the
24 three markets comprised 25.7 per cent of all Class II milk.
25 This declined to 22.5 per cent in 1971, to 18.8 per cent in

1 1972, and to 11.7 per cent for the first quarter of 1973 --
2 Table Number 11.

3 In more recent months, although data are not
4 available, the severe curtailment of milk supplies in this
5 region has left only very limited quantities of milk available
6 for manufacture into butter and powder.

7 Under the aforementioned market conditions, the
8 elimination of the butter-powder formula provisions of the
9 orders, except for the flush production months, should not
10 result in a serious problem in clearing the market of reserve
11 milk supplies.

12 Need for B-P formula price during flush production
13 months -- While Eastern et al are strongly in favor of the
14 removal of the butter-powder formula price as an alternative
15 factor in pricing reserve milk in the five markets here under
16 consideration, we are equally convinced that this alternative
17 price determinant should be retained for possible use during
18 the flush production months of April, May, and June of each
19 year.

20 Although the total quantity of reserve milk on the
21 five markets has declined substantially, as noted previously
22 herein, there continues to be considerable seasonal variation
23 in the monthly quantities throughout the year -- Table Number
24 12.

25 Daily average Class II milk on the five markets,

1 Class II and III for Order Number 36, for the years 1970 to
2 '72 has averaged 89 per cent of the annual daily average in
3 January, increased to 134 per cent in June and then declined
4 to a low of 76 per cent in November.

5 Data for the individual markets reflect a similar
6 pattern with greatest quantities of reserve milk available
7 in April, May, and June of each year. Data was available for
8 all but the New York-New Jersey market for 1973 and they
9 show comparable seasonal patterns to those for the 1970 to '72
10 period.

11 Similarly, indexes of seasonal variation for milk
12 used in butter and powder manufacturing for the three markets
13 for which such data were available -- New York-New Jersey,
14 Boston Regional and Eastern Ohio-Western Pennsylvania -- are
15 set forth on Table Number 12.

16 As would be expected, the quantities of milk used in
17 these two outlets reflects a similar, albeit more skewed,
18 seasonal pattern than that for total Class I utilization.
19 This indicates that the manufacture of butter and powder con-
20 tinued to serve as an outlet for excessive reserve supplies
21 on these markets during the flush production months of the
22 year.

23 In summary -- In view of the market and pricing
24 conditions described at length here, we respectfully urge the
25 adoption of Proposal Number Five in these proceedings.

1 Continued pricing of reserve milk for Federal order
2 markets at levels substantially below the prices being paid
3 by manufacturers in the midwest, even at creameries, strains
4 at economic logic and credibility.

5 Absent such action, the Federal and State orders
6 here under consideration will continue to price reserve milk
7 in an irrational, disruptive and counter-productive manner.

8 Prices payable to dairy farmers will continue to
9 be depressed at a time of severe inflation in production costs,
10 alarming curtailment of market supplies, and dangerous losses
11 in productive capacity throughout the dairy industry of this
12 region.

13 BY MR. MICALE:

14 Q Mr. Mathis, does that complete your statement?

15 A Yes, it does.

16 Q Mr. Mathis, I would like to ask you as to whether
17 or not what has been labelled Figure One, the graph, and
18 Tables One through Twelve, which you have referred to in your
19 testimony, were prepared by you or under your direction?

20 A Yes, they were.

21 MR. MICALE: Your Honor, I move that what has been
22 marked for identification as Exhibit X-14 be entered into
23 evidence.

24 JUDGE: Let the record show that, without objection,
25 the attachments to the statement which have been identified as

1 X-14, containing 14 pages representing figure one and tables
2 one through twelve are now received in evidence.

3 Exhibit X-14 was received in evi-
4 dence.

5 JUDGE: Do you anything further on direct?

6 MR. MICALE: No, Your Honor.

7 Mr. Mathis is available for cross examination.

8 CROSS EXAMINATION

9 BY MR. COCHRAN:

10 Q If I understand your proposal correctly, you would
11 have the butter-powder formula price to price all of the Class
12 II milk in the five orders that you mentioned during the
13 months of April, May, and June.

14 Is that correct?

15 A Yes, sir.

16 Q Under those circumstances, if the \$1.18 difference
17 between the Minnesota Wisconsin series and the butter-powder
18 formula -- if that continued, then the price for Class II
19 milk in the market would be \$1.19 less than the Class II price
20 if the Minnesota Wisconsin price series were the determining
21 factor.

22 Is that correct?

23 A For what month, sir?

24 Q April, May, June.

25 A Given the qualifications in your hypo; yes.

1 Q Under your proposal, would the seasonality of
2 Class II price now in these Orders, as reflected by the plus
3 and minus adjustment; under your proposal, would that be con-
4 tinued in the Orders?

5 A Yes.

6 Q Then it is not a \$1.18 but becomes a \$1.28, does
7 it not?

8 A What months are you talking about, sir?

9 Q April, May, and June.

10 We are assuming you would have \$1.18 difference be-
11 tween the Minnesota Wisconsin and butter-powder.

12 I have checked the seasonality for those three
13 months. I think one is nine cents, one is minus ten, and
14 one is minus 11. That is approximately ten cents.

15 A Well, the figures speak for themselves.

16 Q Will you please equate \$1.28 per hundredweight in
17 terms of pounds of cheese made from that milk? What does that
18 difference represent in a pound of cheese product?

19 A I guess a simple way would be multiply it by 20.0.

20 You get ten pounds of cheese out of 11 pounds of
21 milk, roughly.

22 Q Then the cheese manufacturer, in these five orders,
23 would have a product cheese cost 13 per cent per pound less
24 than the cheese manufacturer has in the midwest.

25 Is that correct?

1 A I do not know because I do not know what the cost
2 would be in the midwest.

3 Q If you are equating cost of product on milk costs --
4 we had a decision the other day, yesterday, which provided
5 the Minnesota Wisconsin series as the Class II price in that
6 area --

7 A I am sorry. I cannot hear you, sir.

8 Q You are familiar with the decision issued yesterday
9 on the classification hearing?

10 A Yes, I am.

11 Q That cheese, in Class II, in those midwestern Orders --

12 A Would you repeat the last part of your question?

13 Q That cheese is in Class II in those midwestern
14 orders.

15 I am talking about hard cheese.

16 A It was my impression that hard cheese was in
17 Class III in those midwestern orders.

18 Q What was the decision issued yesterday with res-
19 pect to the Class III price in those Orders?

20 MR. MICALE: Your Honor, I am going to object.

21 Mr. Cochran is asking Mr. Mathis to critique a
22 decision which he has read in a news release.

23 I feel it is an unfair question. It is putting him
24 on the spot as to briefing the case.

25 MR. COCHRAN: Your Honor, I am dealing with an

1 expert who has spent his life in the field.

2 I can assure you this gentleman knows what is in
3 that decision.

4 If he says, I do not know, why, he does not know;
5 but I am quite sure that he is completely aware of what that
6 decision specifies and I think it is relevant.

7 MR. MICALE: Then you should ask the witness if
8 he knows what is in the decision and proceed from there.

9 JUDGE: Mr. Cochran, let's save time by asking him
10 if he does know. If he knows, we may proceed. If he does not
11 know, then we will go to something else.

12 BY MR. COCHRAN:

13 Q Do you know what the decision issued yesterday on
14 the 39 orders provides with respect to the Class III price
15 in those midwest orders?

16 A I know what the press release said, sir.

17 The press release said the Class III milk would be
18 priced on the basis of the basic formula price.

19 Q Could you tell me what the basic formula price is
20 in those orders?

21 A The Minnesota Wisconsin pay price, adjusted to a
22 3.5 per cent releases.

23 Q That is kind of a 'round about way to get there, is
24 it not?

25 A That is the way the press release defined it, as I

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1 recall.

2 Q Is this hard cheese product -- is that what might
3 be accepted as a storable product? It is not like fluid milk
4 that is perishable, is it?

5 A That is correct.

6 Q Is its condition such that it can be transported
7 fresh over long distances throughout the country?

8 A I believe that is true; yes.

9 JUDGE: Mr. Cochran, if you would draw back from
10 the mike, a little. We are getting feedback.

11 BY MR. COCHRAN:

12 Q Is the midwest an area within marketable distance
13 of the New England area with respect to the cheese product?

14 A I am not an expert on transportation but I would
15 presume so since we do find some quantities of Wisconsin
16 cheese in our dairy cases.

17 Q Do you think that might dry up when your cheese
18 manufacturers have a 12 cents a pound advantage on cheese
19 costs?

20 A I do not think so.

21 Q Are you telling me, as an expert, that, if handler
22 A has cheese that he can sell for a price 12 cents a pound
23 more than handler B can, that handler B can market just as
24 much cheese as handler A?

25 Is that your economic knowledge as an Economist?

1 A Is that my what?

2 Q As an Economist, you asked me that question.

3 Here is a man who has a 12 cents advantage in cheese
4 cost competing with a man who has a disadvantage. Which one
5 is going to sell the most cheese, presuming they are of equal
6 quality?

7 A Presuming they are of equal quality, you say?

8 Q Yes, sir.

9 A I do not know. That is too simplistic an example
10 to give.

11 There are too many factors involved.

12 Q That is a question beyond your limitation as an
13 Economist, is that right?

14 JUDGE: Mr. Cochran, we are arguing now.

15 I do not think we can make the witness say what
16 you might want him to say.

17 Let's go to another question.

18 BY MR. COCHRAN:

19 Q If the midwestern cheese process were unable to
20 compete, do you think perhaps, as an Economist, that he would
21 perhaps lower the price he paid for his milk from which he
22 made the cheese?

23 A He might try to but that would depend on the compe-
24 titive conditions under which he is buying whether he can
25 lower the price to the farmers or not.

1 I do not accept your analysis at all.

2 Q I premise my question with this; that he was com-
3 peting with somebody who was buying his milk about \$1.28
4 cheaper.

5 Answer it on that premise.

6 A I am sorry. I did not follow you on that.

7 Q My premise was, with respect to these two cheese
8 makers and cheese sellers, the one in the New England area is
9 going to buy his milk at \$1.28 per hundredweight cheaper.

10 Answer it on that premise.

11 MR. MICALE: Your Honor, I am going to object to
12 that question.

13 Mr. Cochran is putting Mr. Mathis in the position
14 of answering two hypotheticals.

15 Mr. Mathis has made a statement on the record.
16 Cross examination should be addressed to his statement and as
17 to the facts contained in his statement.

18 Mr. Mathis is being put in the position of speculat-
19 ing on the hypotheticals Mr. Cochran is putting forth.

20 MR. COCHRAN: Your Honor, this is not hypothetical.

21 JUDGE: I am not going to require that cross examina-
22 tion be limited to verbatim statements that have appeared in
23 direct presentations; but, neither am I going to permit an
24 extended argument back and forth on a hypothetical thing when
25 the witness' answers indicate he does not accept the theory or

1 basis on which the hypotheticals are made and they, having
2 been asked and having been given an answer thus far, they
3 will stay in the record but let's not now proceed any further
4 with what might happen if, with respect to -- well, the
5 questions that have been asked.

6 I think we have had enough now on what would happen
7 if somebody had a \$1.20 and a \$1.28 product and somebody had
8 something else; who would buy it.

9 I do not know whether Mr. Mathis knows or not.

10 MR. COCHRAN: What I am interested in is the basis
11 of my inquiry.

12 JUDGE: You made it, Mr. Cochran. You pursued it.
13 You asked it about five different ways and I prefer we go on
14 to something else.

15 MR. COCHRAN: Yes, sir.

16 I am going there through a different basis.

17 In this proposal that this witness has made, he is
18 flirting with the breakdown of the Minnesota Wisconsin series
19 price and the breakdown of the Class I price of every Federal
20 Order in the country. That is why I am trying to get his
21 comments on record.

22 THE WITNESS: Are you an Economist, sir?

23 You are making a statement which I have indicated
24 to you previously I do not accept. I think it is nonsense.

25 If you want to put that on the record, then I think

1 you ought to do it.

2 Don't try to do it through me.

3 JUDGE: Mr. Cochran, Dr. Mathis --

4 THE WITNESS: I apologize.

5 JUDGE: I appreciate it. Thank you. It is
6 accepted.

7 Now, both of you gentlemen, let's proceed in an
8 orderly fashion.

9 I have ruled and said we have had enough now on it,
10 about who would do what at certain prices. It is in the record.
11 I think that is far enough.

12 MR. COCHRAN: All right, sir. I will go along.

13 BY MR. COCHRAN:

14 Q These lower prices in April, May, and June; they
15 would also apply to milk used in ice cream.

16 Is that correct?

17 A Yes.

18 All Class II products or Class III, in the Eastern
19 Ohio-Pennsylvania region.

20 Q Then, if your proposal were adopted, it would just
21 about be impossible for the producers involved to obtain any
22 relief from the current situation until July one.

23 Is that correct?

24 A That is correct and I think, if it is not adopted
25 and some recognition of the problem of clearing these markets

1 is not provided, then I think we have other types of problems
2 in our northeast market.

3 We are cognizant of that and that is why we pro-
4 posed it. We are concerned if anyone else is getting those
5 blend prices up to farmers but we also realize that the
6 immediate imposition of this proposal would do serious violence
7 to the dairy industry.

8 That is why we have taken the alternative of provid-
9 ing for some basis of permitting the industry to function dur-
10 ing the flush months.

11 Q Do you have an oversupply of milk in the New England
12 area at the present time?

13 A No, we do not have an oversupply of milk.

14 Q Do you think that your producer members are getting
15 all the money they need to stay in production?

16 A No.

17 But, if we do not provide some outlet for manu-
18 facturing milk to clear these markets during the flush months,
19 it will not make any difference whether we are making enough
20 money or not. There will not be any market for it.

21 Q Then you are telling me that, if a cheese manu-
22 facturer buys his milk at \$1.28 less price, he will not manu-
23 facture cheese.

24 Is that what you are telling me?

25 A I do not know whether he will make cheese or not.

1 I just want to make sure that he will.

2 Q But you really do not know, do you?

3 A No; nor do I know of anybody else who does.

4 That would be a decision made by that cheese manu-
5 facturer.

6 MR. COCHRAN: I think that is all I have.

7 JUDGE: Further questions?

8 Mr. Hammerman.

9 BY MR. HAMMERMAN:

10 Q Mr. Mathis, in Table 12, you indicate the relative
11 percentages of Class II utilization, indicating the index for
12 each month as it relates to the year.

13 You will note that, for the New York-New Jersey
14 market, both March and July were in excess of the annual
15 average.

16 Is that correct?

17 A That is correct.

18 Q Would you know whether there would be facilities to
19 utilize all that Class II milk in products other than butter
20 and cheese in those months, during the coming year -- other
21 than butter and powder. I am sorry. I said cheese; I meant
22 powder.

23 A This year I believe there will be but I do not
24 have direct information with respect to the capacity of all of
25 the plants involved in these markets.

1 You asked me, specifically, I guess, about New York-
2 New Jersey.

3 Q Right.

4 A I do not know the precise capacity of all of the
5 proprietary and cooperative plants that serve to manufacture
6 excess milk supply in this market.

7 Q As I understand it, Eastern does not operate manu-
8 facturing facilities of its own.

9 Is that correct?

10 A That is not entirely correct.

11 We have a standby manufacturing plant located in
12 Glover, Pennsylvania which we will operate if needed but we
13 do not operate now and we do not anticipate that we will have
14 to operate this year.

15 Q You have made a pretty comprehensive study indicat-
16 ing the factors that influence the price of butter in your pre-
17 pared statement.

18 Is that correct?

19 A Yes, sir.

20 Q And you would exclude from that the use of the
21 butter-powder formula as responsive to market conditions for
22 that market.

23 Is that correct?

24 A I do not know that I understand the question.

25 Q You indicated in your statement the factors that

1 influence the prices of butter and powder for quite a lengthy
2 period. You went into some detail.

3 You will agree with me -- and I guess you have
4 come to the same conclusion -- I am asking if you agree with
5 me that the actual market price of those products responded
6 quite well to the influences which you can trace?

7 A Well, it would appear that the butter prices res-
8 ponded quite rapidly.

9 Q Have you analyzed the powder prices?

10 A Yes, I did.

11 I do not think the response there was as noticeable.
12 It is a little bit like taking an aspirin. You do not know if
13 your headache went away because you took the aspirin or whether
14 it would have gone away anyway so, what I am saying is, we do
15 not know where the powder prices would have gone if additional
16 imports had not come into the market.

17 It is my judgment they would have gone quite a bit
18 higher than they did and it is my judgment that, probably, the
19 imports did depress the prices of powder from levels that
20 otherwise would have prevailed.

21 However, it does not show up.

22 Q Mr. Mathis, the general import of your statement is
23 that higher prices of Class II milk would be a marked incentive
24 in the greater production of milk.

25 Is that correct?

1 A I think my statement speaks for itself.

2 I think that, perhaps, is one factor involved here;
3 the fact that the current depressing of Class II prices, arti-
4 ficial depressing of Class II prices is likewise depressing
5 prices to producers at a time when producers simply cannot
6 stand it.

7 If we want to have a dairy industry left in the
8 northeast, we'd better do something about it and do something
9 quickly. There are other factors involved and I think they
10 are set forth in my statement.

11 Q Well, the factors involved -- I do not recall your
12 alluding to them specifically, but I am referring to other
13 factors that influence the production of milk.

14 That are such other factors, other than price; are
15 there not?

16 A Certainly.

17 Q If you permit me to mention some of those factors,
18 you can tell me whether you agree with them.

19 The availability of fertilizer is a factor?

20 A In a very indirect way; yes, certainly it is.

21 Q The quality of the feed available is a factor?

22 A Yes.

23 Q The freshening programs in particular areas of the
24 milkshed are factors?

25 A I wonder if you could explain that to me.

1 I know what freshening is but I do not know what
2 you mean by it in this context, sir.

3 Q Well, the implication of my question is that price
4 cannot do much to increase milk production if the farmer has
5 fashioned his freshening program in a way that, within the
6 next few months, he just will not have much milk, no matter
7 what he does.

8 A That may be true to some extent with respect to
9 the cows that he has in his barn now but, of course, he can
10 alter his feeding program in response to price. He can alter
11 his decisions with respect to culling or adding to his herd in
12 response to price.

13 So, it is not that clear cut.

14 Q But the feeding program would be influenced by
15 the availability of good feed?

16 A More so, I think, it would be influenced by the
17 relative price of feed versus milk.

18 Q Tell me if you will agree with me that, in the
19 area with which you are probably familiar in Syracuse, that,
20 at any price, you could not get feed last year with the high
21 quality protein content, a mixed feed.

22 A Well, during the winter months of '72, '73, that
23 is correct.

24 We had a terrible transportation problem in getting
25 feed from Midwest sources.

1 Q Has that situation changed?

2 A It is my general impression it is better than it
3 was; however, the prices are so exorbitant that nobody can
4 afford them --

5 I should not say nobody can afford them but farmers
6 were not purchasing them and a lot of farmers could not afford
7 them.

8 I think it is evident in the fact that production
9 per cow and production per farm has dropped off.

10 Q So if uniform price producers had been somewhat
11 higher, that would not alleviate the situation as far as
12 production is concerned?

13 A I think it would have; if the prices to producers
14 had been adjusted as we had originally requested they be
15 adjusted, I think the situation we are facing together would --
16 today, would be a lot different.

17 I am not saying farmers would not be disillusioned
18 by Government actions today but the economic situation would
19 not be quite as bad.

20 Q But it would not have produced much more milk,
21 would it?

22 A I think so because I think it might have helped the
23 farmers in production that went out.

24 I think, if the price had been higher, farmers
25 would not have been in such a cost-price crunch that, to the

1 extent they did not feed grain.

2 In other words, they would have fed more. I
3 think they would have had more milk. They would not have
4 culled their herds quite as extensively as they did.

5 Q To some degree, at any rate, Mr. Mathis, that
6 increased production which you just alluded to would have
7 resulted in a lower price; would it not, if we had more milk
8 in Class II?

9 A Well, that would depend on the relative level of
10 class prices, of course; whether or not the blend would have
11 gone down.

12 You are saying any increase in receipts without an
13 accompanying increase in Class I use would have lowered the
14 blend; yes; however, with increased volumes of production, it
15 is very likely that, along with the stabilization of price
16 level, the farmers may be better off.

17 Q Can you envision a greater utilization of Class I
18 if we had more milk?

19 A Oh, yes.

20 I think there is some indication that Class I use
21 has been increasing in some of the markets.

22 If you look at the market in aggregate, they do
23 not show significant increase or improvement in Class I sales,
24 but individual markets do.

25 Q To your knowledge, was there any period when there

1 was a shortage of milk fluid use?

2 A Yes.

3 Q In the New York milkshed?

4 A Yes, sir.

5 Q Is that borne out by the percentage of utilization?

6 A I do not believe that the percentage of utilization
7 in the market, in and of itself, is an indication of the
8 degree of tightness in that market.

9 Q Are you aware of any processing milk plants of any
10 size that, on any one day of this past year, did not have all
11 the milk it needed?

12 A I am aware of processing milk plants, fluid milk
13 plants that did not have milk when they wanted it and had to
14 shut down during certain hours at great cost to them because
15 milk was not available.

16 We did have some disruption of the New York-New
17 Jersey market.

18 Q But the milk was obtained from some source; was it
19 not?

20 A Eventually, it was obtained; yes.

21 Q So consumers had milk and there was no shortage.

22 The description you described did not depress the
23 Class I utilization.

24 A I am not even sure about that.

25 I think there was an indication that there were

1 spot shortages in New York City during this period but I am
2 not sure. I read this in one of the trade journals.

3 MR. HAMMERMAN: That is all I have.

4 THE WITNESS: These were momentary shortages of
5 milk on supermarket shelves.

6 MR. HAMMERMAN: That is all I have.

7 JUDGE: Further questions?

8 Mr. Lawler?

9 BY MR. LAWLER:

10 Q Mr. Mathis, on page 14 in your statement regarding
11 impact on handlers, you seem to group together the pricing
12 reserve milk associated with the five markets.

13 Are you familiar with the milk marketing economics
14 within these five markets?

15 A Yes, I think so.

16 Q Is the problem of class utilization the same in
17 all five markets?

18 A No, sir.

19 Q Would you say the balancing problems in Order Two
20 are the same as we might find in the other markets?

21 A No. They are not the same.

22 Q Could you elaborate on that, please?

23 A I think it is pretty evident from the relative
24 volumes of Class II milk available in Order Two that the Class
25 II segment of the industry in the New York-New Jersey market is

1 vastly larger. As a matter of fact -- I have not checked it
2 recently -- but, for a long time, there was more Class II milk
3 in the New York-New Jersey market than there was total milk in
4 all of the other markets in the northeast put together.

5 Q How was this balancing generally handled?

6 A In what respect?

7 Q Say, at the time of the season of surplus or flush?
8 What happens to the surplus milk?

9 A It goes into the manufacturer's uses.

10 Q What, more particularly, in order to --

11 A It goes into butter, powder, cheese, ice cream. It
12 is used to some extent in frozen cream, creams --

13 Q Does Eastern have any manufacturing facilities that
14 are cooperative?

15 A Yes. We do. I indicated we did.

16 Q What type of process manufacturing do you do?

17 A Our plant is capable of manufacturing condensed,
18 both whole and skim, and also powder.

19 Q Do you do any powder?

20 A We havenot had to operate the plant since we have
21 owned it.

22 Q When did you acquire it?

23 A I do not recall specifically the date we purchased
24 it. It was sometime in the past year.

25 Q Are you familiar, generally, with the butter-powder

1 operations in Order Two that are maintained by the operating
2 cooperatives?

3 A In a general way; yes.

4 Q When the seasonal surplus requires a -- Would you
5 say it requires a heavier utilization of butter-powder opera-
6 tion by these cooperatives in order to find a price in the
7 marketplace that would handle and make a stronger product of
8 the milk?

9 A Well, I suspect that is probably true but no more
10 so than for any proprietary dealer making butter-powder in the
11 market.

12 I think it is a general characteristic.

13 Q The main thrust of my question is that it is
14 butter-powder, generally speaking, in most of these seasonal
15 sales prices.

16 A I am not necessarily convinced that is true.

17 I know there is a great deal of seasonality in the
18 production of cheese, for example. There is some seasonality
19 in the production of ice cream.

20 Q Calling you attention to the copy on page 15, you
21 state, "Comparable data for the New York-New Jersey market, the
22 largest in the Federal order system, indicates that Class II
23 milk in 1973 was 11.7 per cent less than in 1972."

24 What is the source of that data?

25 A It is the data in Table Number Ten attached to my

1 statement.

2 Q Maybe you could point me to that 11.7 per cent re-
3 duction in Order Number Two, the New York-New Jersey Order.

4 A I am sorry.

5 The source of this data is the pool data, Mr.
6 Lawler, for Order Number Two, Class II, pool milk.

7 If you take the total Class II pool milk during
8 1973 and compare it with the total Class II pool milk in 1972,
9 you will find that this past year's total was 11.7 per cent
10 less than it was in 1972.

11 Q I will accept that source.

12 Now, taking 11.7 from the total amount of Class II
13 utilization in 1972, you would still have approximately 4.5
14 million thousand pounds of milk.

15 Is that not so?

16 In total Class II utilization in Order Two.

17 A I will accept your numbers.

18 Q I am just roughing it off at ten per cent.

19 A It sounds reasonable.

20 Q Do you have any idea of what type market is
21 available for a manufactured product in order two?

22 A Yes.

23 Q Could you give me an estimate of what volumes there
24 is a market for?

25 A As far as we are concerned, we are knowledgeable of

1 there is a market for all of that milk with proprietary hand-
2 lers that we have. A great part of it goes into cheese manu-
3 facture. Some of it goes into butter and powder.

4 Q You do not handle all 4.5 million pounds, do you?

5 A No, but we handle a significant portion.

6 Q Would you say more than 40 per cent?

7 A Eastern alone?

8 No, I do not believe so but probably, if you put
9 Eastern along with the independent producers, or dependert, as
10 I like to call them, I think probably it would come to more
11 than 40 per cent.

12 MR. LAWLER: No more questions.

13 JUDGE: Any further questions?

14 Mr. Oman.

15 BY MR. OMAN:

16 Q Mr. Mathis, I refer to your statement on page ten
17 at the bottom.

18 You talk about a comparison of the prices yielded
19 by the butter-powder formula in the northeast with actual
20 prices paid by creameries. Then you go on down and refer to
21 Table Seven.

22 Now, for clarification, the actual prices paid by
23 creameries that you are referring to here and in Table Seven
24 are not intended to refer to the northeast plants and
25 creameries; is that right?

1 A That is correct.

2 They refer, as it noted in the tables, to Minnesota
3 and Wisconsin and the average for the United States as a whole.

4 Q Your text, in this part here --

5 A The reference to the northeast in this sentence re-
6 fers back to the butter-powder formula provisions of the
7 northeast because there are other butter-powder formulas
8 available in the Federal Order System and I just -- I merely
9 wanted to indicate to you which one I was talking about.

10 Q Thank you.

11 Now, in reference to the plants, pay prices that
12 you are referring to on Table Seven, what type of plants are
13 these?

14 A These are creameries.

15 They are listed in Dairy Products, I believe is
16 the name of the publication that I used. They are listed as
17 butter and butter by-product plants. I assume they are
18 butter-powder plants.

19 Q They would not serve fluid markets; is that correct?

20 A With fluid milk?

21 Q As in the northeast.

22 A That is true. They are part of the manufacturing
23 industry.

24 It is an indicator of what they are willing to pay
25 for milk in the competitive environment of the north central

1 states that are listed or in the United States.

2 It is only indicated at a general level. I am
3 sure there are prices higher and prices lower.

4 Q To the extent that these types of plants run at
5 relatively full capacity, versus a plant whose primary purpose
6 is to service the fluid market and runs at, let's say, 20 to
7 30 per cent capacity, everything else being somewhat equal or
8 constant, which plant would have relatively lower cost and,
9 therefore, perhaps be able to pay the higher prices?

10 A Presumably the plant that runs constantly would be
11 more efficient but, I think it should be stated for the record
12 that there are plants in the northeast that run almost con-
13 stantly, butter-powder plants, that are very efficient; al-
14 though I must admit, this last year, I do not know if they
15 ran constantly.

16 Q With reference to the April, May, and June months
17 in which you wish to retain the butter-powder snubber, going
18 to Table 12 of your exhibit, under the Boston Regional 1973
19 column, given those figures down in the last half of the page
20 with the various months, if you are going to pick out two
21 months to which butter-powder snubber should apply, might
22 not July be an equally applicable month for the snubber to
23 apply, as well as April, May, and June?

24 A You are talking about the Boston Regional market?

25 Q Yes, sir.

1 A It probably would be; however, I felt that, in
2 order to preserve the uniformity of pricing within a region,
3 I had to make a choice. It seemed to me the better choice
4 was to go where the heaviest use was; namely, New York-New
5 Jersey, and follow the seasonal pattern there.

6 You will not that, really, the seasonal pattern
7 is not too much different in New York-New Jersey's than the
8 other markets. I realize Boston Regional is an exception to
9 this to some extent. I am not sure how significant it is but
10 I felt that, weighing all of the situation, we would go where
11 the problem is the greatest.

12 MR. OMAN: Thank you.

13 That is all I have.

14 JUDGE: Further questions?

15 MR. ARMS: My name is David C. Arms, General Manager,
16 Richmond Cooperative Association, Richmond, Vermont.

17 JUDGE: Spell your last name, please, sir?

18 MR. ARMS: A-r-m-s.

19 BY MR. ARMS:

20 Q Mr. Mathis, in response to a question by Mr.
21 Cochran, I believe you responded to one question to the effect
22 that the difference between the butter-powder formula and the
23 Minnesota Wisconsin price series might continue at \$1.28 or
24 thereabouts by the end of June.

25 Is that correct?

1 A I did not say that. That was contained within Mr.
2 Cochran's hypothetical example to me.

3 He said, if it was, will this happen. I either
4 said yes or not, depending on which question you have refer-
5 ence to but I did not say that; no.

6 I do not know that that is going to be the case.

7 Q When is the announcement made on dairy price
8 support levels for the coming year?

9 A It has to be made by the beginning of the marketing
10 year which is Table One.

11 When the Secretary will make it, I do not know. I
12 have a tendency to agree with my friend, Jud Mason, that it
13 should be done as soon as possible, March one.

14 But, I would expect that it be made sometime
15 immediately prior to April one, depending on how the politics
16 fall.

17 Q Would you agree that the purchase price as announced
18 for butter-powder, in relation to cheese, could have a material
19 impact on the difference between the butter-powder formula and
20 the Minnesota Wisconsin series; could it not?

21 A Yes.

22 Q Do I understand your proposal correctly; that the
23 butter-powder formula would apply only April through June?

24 Is that correct?

25 A That is correct.

1 What we would do, Mr. Arms -- what we are proposing
2 is to leave the provision alone as they are with respect to
3 their application in the months of April, May and June. In
4 the other months of the year, we would delete from the orders
5 the butter-powder snubber or butter-powder formula price in
6 the pricing of Class II milk or Class III, in Ohio and
7 Pennsylvania.

8 We are not proposing a split class or reserve classi-
9 fication system.

10 Q In light of that -- and that is how I understood
11 your proposal to be and I appreciate your confirming it -- is
12 it fair to say that, overall, your proposal is designed to
13 assure a clearing of the market during these flush production
14 months, an orderly market?

15 A We are confident that it will; yes.

16 Q Your proposal does, however, provide that we would
17 go to the Minnesota Wisconsin price series for the month of
18 March if the Secretary would adopt it in March.

19 Is that correct?

20 A Well, it is our position that, given the normal
21 procedures, there would be no way to get this thing implemented
22 by March anyway so, in effect, the formula would not be changed
23 until the first of July.

24 The orders might be amended prior to that time but
25 the impact would not occur until July one.

1 Q So the main thrust of your testimony on your pro-
2 posal is gearing for a change in the Class II price formula
3 effective after the first flush period that you refer to?

4 A Yes.

5 We would like to now but we recognize that it could
6 be a problem. We are not so confident in our own minds that
7 there will not be a problem that we are willing to do such
8 violence to the manufacturing dairy industry in our market
9 at this time.

10 We feel -- Let me say it this way.

11 If the Secretary accepted and followed our pro-
12 posed suspension order back on November; yes, but now we find
13 ourselves facing the beginning of a flush period. Eastern has
14 serious concern over whether that is the proper time to impose
15 this type of a price change on an industry..

16 Q In light of that response, would you consider, in
17 light of your long experience in the dairy marketing in the
18 northeast and the economics involved, would you consider an
19 action taken by the Secretary that would cause abrupt change
20 in the Class II price for the month of March in the Minnesota
21 Wisconsin series and then a dropping back to the butter-powder
22 snubber for the months April, May, and June; that this would
23 be really consistent?

24 A No.

25 I do not think it would serve any useful purpose

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1 for one month.

2 Q I noticed, in your statement -- strike that.

3 I did not hear any testimony as to Eastern's posi-
4 tion with regard to emergency action on the basis of this
5 record.

6 Does Eastern take the position that the seriousness
7 of this issue deserves careful consideration and the issuance
8 of a recommended decision or does Eastern take the position
9 that we should go immediately to a final decision?

10 A I think that the position Eastern takes, as I have
11 already explained in my previous remarks to you, Mr. Arms;
12 but, so that you will be sure to understand it, I think that
13 our statement is correct; that we consider it a very serious
14 issue.

15 I would not have gone through this type of work if
16 I did not think it was serious but I think it is serious from
17 the standpoint of the dairy production industry, as well, not
18 only from the farmers' standpoint, but from the dealers that
19 we have to do business with.

20 I think it should be given great consideration by
21 the Secretary. It is an urgent problem and he should not drag
22 his feet and, if he does, we will scream and I presume others
23 as well but, on the other hand, we feel that this thing could
24 be implemented by July one more effectively without disrupting
25 the industry than with great haste and without a good decision.

1 Q Am I correct, also, in my understanding that
2 Eastern's position is that much of this problem could be
3 ameliorated rather quickly if the Secretary were to act as to
4 the level of dairy price supports for butter and powder?

5 A Yes. I think that is true.

6 Part of the problem would be ameliorated.

7 I am not sure, through, even if he raised it to
8 90 per cent of parity, that he would alleviate all of the
9 problem, or even enough of the problem, to make us change
10 our mind on this issue and I do not anticipate --

11 I end my statement concerning, even if he goes to
12 90 per cent of parity, I do not believe that the adjustments
13 in his butter and powder prices will be sufficient to correct
14 the problem.

15 Q One final question, Mr. Mathis.

16 Has Eastern Milk Producers taken any position or
17 plan to take any position with respect to the proposal to use
18 the simple average of the Minnesota Wisconsin and butter-
19 powder formula prices?

20 A We are not taking any position on this in this
21 hearing.

22 We are supporting our own proposal which we believe
23 is more reasonable.

24 MR. ARMS: Thank you very much.

25 JUDGE: Let's take a five minute recess.

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Whereupon,

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The hearing was recessed for a short period.

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JUDGE McALPIN: Gentlemen, we are reconvened and back on the record. Dr. Mathis is still available for cross-examination.

MR. COCHRAN: I have one brief question.

JUDGE McALPIN: All right, Mr. Cochran.

CROSS-EXAMINATION

BY MR. COCHRAN:

Q Does Eastern Milk Producers Cooperative perform the balancing function or activity with respect to the milk of all of its members?

A Yes, sir. Eastern Milk Producers milk is balanced, through proprietary milk analysts.

Q But the balancing is made not from your operation of Eastern Milk facilities, but by directing it to other facilities.

A That's right.

MR. COCHRAN: Thank you, sir.

JUDGE McALPIN: During the recess I had several inquiries about what will happen if we don't finish tomorrow, which apparently we won't. And whether or not we will reconvene on Monday, in light of the announcement on the bulletin in the foyer of a meeting in this auditorium at 10:00 o'clock Monday, February 25.

That is true, that the auditorium is engaged by a group for Monday morning. If we do run over into next week

1 we will reconvene on Monday at 1:30 to give you time to travel
2 and go home for the weekend and get back in time, and also
3 make it possible for us to finish up without running the
4 entire week, I hope.

5 But I thought I would announce that, because several
6 inquiries have been made as to what we might do with reference
7 to Monday, in light of the announcement outside. Now, are
8 there further questions? Mr. Miller.

9 CROSS-EXAMINATION

10 BY MR. MILLER:

11 Q Mr. Mathis, I direct you to the top of Page 2, of
12 your testimony. You refer to representing an association of
13 8,000 farmers. How many of these 8,000 farmers have their
14 milk marketed through proprietary handlers in Order No. 2?

15 A About 5,800.

16 Q The proprietary handlers in Order No. 2 buy this
17 milk from the 5,800 members of your association and must pay for
18 them the Order No. 2 official blend price, as a minimum; is
19 that correct?

20 A If they buy the milk directly from our members are
21 you saying?

22 Q They do buy the milk directly from the 5,800 produ-
23 cers; do they not?

24 A Some of them do and some of them don't. We market
25 some of our milk as a handler. We operate some of our own

1 bulkhead routes. In those cases they have to pay us the
2 Order 2, Class I price or Class II price.

3 Q Of the 5,800 producers in Order 2, how many produ-
4 cers are paid by proprietary handlers directly? An approxi-
5 mation will suffice.

6 A I don't know. I really haven't checked that recently,
7 because we are growing more and more all the time.

Q Wouldn't you say it is more than 75 percent of the
5,800?

10 A I wouldn't believe so.

11 Q Would you say it is more than 65 percent?

12 A I don't know, sir. I can't answer your question
13 because I don't know.

14 Q Is it more than 50 percent?

15 MR. MICALE: I object, Your Honor.

16 JUDGE McALPIN: Mr. Miller, he said he doesn't know.

17 MR. MILLER: He does know, sir.

18 JUDGE McALPIN: He said on the record, Mr. Miller
19 and he said it under an oath that he doesn't know and you can't
20 make him say anything different and you aren't going to ask
21 him any more times than necessary to get an answer.

22 Now let's proceed.

23 BY MR. MILLER:

24 Q Without knowing the number, would you agree that a
25 substantial number of producers --

1 MR. MICALE: I am going to object again, Your Honor.
2 Mr. Miller is apparently attempting to lead Mr. Mathis into
3 some conclusion when Mr. Mathis has unequivocally stated on
4 the record that he does not know.

5 JUDGE McALPIN: Mr. Miller, this is not an adversary
6 proceeding and I am going to take the position that when the
7 witness says he doesn't know that is his answer. Now let's
8 proceed to something else.

9 BY MR. MILLER:

10 Q Regardless of the number, all of the producers' milk
11 is paid for directly to your members, and must be paid for
12 at a minimum of the official blend price each month; is that
13 correct?

14 A That is correct, plus any handling allowance we
15 may have negotiated with the handler above that, if there has
16 been any. But the minimum would be the order price.

17 Q I have calculations here that show a market yield for
18 the month of January, 1974, for milk turned into butter and
19 powder sold at the Chicago reported prices, which bring an
20 income of \$7.40.

21 I see that the Minnesota-Wisconsin Price for January,
22 1974, is reported at \$8.10. If your proposal was in effect
23 for January, 1974, the pay price for Class II milk would be
24 the \$8.10 and any milk put into butter and powder would have
25 recovered a gross yield of \$7.40.

1 Those figures are correct; are they not?

2 A I don't know whether they are correct or not. I am
3 trying to follow your example. The figures speak for them-
4 selves, I guess.

5 Q I will go through the computation, if you desire.

6 A It's not my testimony.

7 Q You will accept those calculations that I have given
8 to you so far?

9 A No, I am not going to accept the calculations.

10 JUDGE McALPIN: If you have made them, Mr. Miller, in
11 order to formulate a question, please do so. If you are going
12 to testify, let's put you under oath.

13 BY MR. MILLER:

14 Q Would you agree that it would cost something to
15 achieve the \$7.40 sale value from the milk? In other words,
16 it would cost something to convert the milk into the butter
17 and the powder.

18 A This is presuming that you have not already added
19 in the make allowance.

20 Q I have not added in the make allowance. I have
21 given you the gross yield in the sales market for the butter
22 and powder converted from 100 tons of milk. So that where we
23 start, at a minus income of 70 cents per hundred, the differ-
24 ence between \$8.10 pay price and a \$7.40 yield, the actual
25 result would be something even worse than 70 cents minus

1 income, because of the cost of conversion of the milk. Is
2 that not correct?

3 A I don't know if it's correct or not. I haven't had
4 an opportunity to examine it.

5 Q Maybe you didn't follow me.

6 A I don't want to--I put in my statement, Mr. Miller,
7 and I just don't want to make further comment on that type
8 of example. It may or may not be true. I just don't know.

9 Q In the Order, as it is written today, in the snubber
10 calculation there is a make allowance of 48 cents; is that
11 correct?

12 A Yes.

13 Q If we were to take a \$7.40 gross yield and deduct
14 48 cents, we would then be -- have a net yield of \$6.92 instead
15 of \$7.40?

16 A Yes.

17 Q We would be paying, under your proposal, \$8.10 for
18 this milk, if your proposal had been in effect for January,
19 1974.

20 A And if you put it all in the butter and powder.

21 Q No, for that amount of milk put into butter and powder.

22 A Either way, yes.

23 Q Assuming that the plant operation of the proprietary
24 handler using the milk of your members and putting some of it
25 into butter and powder could break even at a 48 cent make

1 allowance, I am not suggesting that any plant can, but assuming
2 that a plant can break even at 48 cents, would that plant
3 operator not be faced with a loss of \$1.18 per hundred for
4 all the milk turned into butter and powder?

5 A I don't know.

6 Q The difference between \$8.10 and \$6.92 results in
7 \$1.18 being lacking, therefore the loss would be \$1.18.

8 A That assumes, also, that all you got out of it was
9 the Chicago price and I don't know if that is necessarily the
10 case. The indication, as I pointed out in my statement, was
11 butter and powder plants in the midwest are already paying
12 more than our particular formula would yield, and for the
13 United States as a whole the pay price by butter and powder
14 plants.

15 Which I presume includes some of these less efficient
16 plants in the northeast that we keep making reference to, all
17 are paying more than what our formula in the Order comes out
18 to.

19 MR. LAWLER: Excuse me, Your Honor, Mr. Mathis' term
20 "less efficient plants in the northeast", there has been no
21 evidence anywhere indicating that plants in the northeast are
22 less efficient.

23 THE WITNESS: There has not. But reference was made
24 to the fact that because of seasonality the plants were unable
25 to operate as efficiently in the northeast. It was in response

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1 to a question by Mr. Gaman, and in that way only did I mean it.
2 I have no question but some of our plants in the northeast
3 are probably as efficient or more so than some of them in the
4 midwest.

5 MR. LAWLER: Thank you.

6 JUDGE McALPIN: You may proceed, Mr. Miller.

7 BY MR. MILLER:

8 Q If you would like me to amend the price recovery on
9 the butter sold to the New York market price as compared with
10 the Chicago price which I used, I will be happy to do so, and
11 I would reduce this loss by four, five or six cents per hundredweight, because the New York market is a little bit higher
12 than the Chicago market.
13

14 JUDGE McALPIN: Mr. Miller, I am going to ask you
15 to put less testimony into your remarks and more questions
16 and let's get on. You are asking the witness if he would like
17 you to do this, that or the other.

18 You do what you choose and put it in the form of
19 questions so that the witness can answer them. And if you
20 persist in testifying I am going to insist that you come up
21 and be sworn at a proper time.

22 MR. MICALE: Your Honor, for the record I object to
23 Mr. Miller's last remark. For the record I would object to
24 that remark. I would concur in your statement that Mr. Miller's line of questioning has been one of placing testimony

1 and assumptions into the record while he is not under oath.
2 I believe he should direct his questions to Mr. Mathis' testi-
3 mony.

4 JUDGE McALPIN: I have already ruled. So you may
5 proceed, Mr. Miller.

6 BY MR. MILLER:

7 Q Mr. Mathis, I understood you to say that you ques-
8 tioned the loss of \$1.18 per hundredweight, because you were
9 not ready to accept the assumption that the butter was marketed
10 at the Chicago butter price.

11 Is there an historical difference in value of butter
12 between the New York market and the Chicago butter market?

13 A Yes.

14 Q Of about how much per pound?

15 A I don't recall now what it is, off the top of my
16 head.

17 Q Is it in the neighborhood of a cent a pound?

18 A I would think more than that.

19 Q Is it less than two cents a pound?

20 MR. MICALE: Again, Your Honor, I am going to have
21 to object.

22 BY MR. MILLER:

23 Q Mr. Mathis, I read to you from the Dairy and Poultry
24 News of February 8, 1974, from which I will quote to you the
25 Chicago butter price and the New York butter price. "Grade A

1 Butter." New York is quoted at 65 cents.

2 A When was this, what was the date?

3 Q The date is February 8th. This quotation is Febru-
4 ary 8th, 1974, the same day as the printing. I read to you
5 the New York Grade A price, 65 cents, and I read to you now
6 the Chicago Grade A price, 64 cents.

7 A Yes.

8 Q Would you say this is indicative of the usual dif-
9 ference in value between butter in the Chicago market, and the
10 New York market?

11 A Well, I don't know. I will read one back to you.
12 Yesterday the price on the New York market was 65 and a half
13 cents and the Chicago market was 64 and a quarter. On the
14 15th in Chicago it was 64 cents and on the 15th in New York
15 it was 65 and a half.

16 This indicates that there is some variation in the
17 difference between Chicago and New York. I can't, by looking
18 at these isolated numbers say without qualification that that
19 represents the true difference or the long-term difference.

20 I have to go back and look at the situation for a
21 longer period of time. It represents what it represents and
22 that is the current situation.

23 Q The highest differential that you have referred to
24 was one and a half cents. And the production of butter from
25 100 pounds of 3-5 milk is considered to be 4.2 pounds, and

1 that makes a difference of 063 cents. If we reduce the loss
2 that I referred to before as being \$1.18 by six and a half
3 cents, we would still have a loss of \$1.11 and a half cents
4 that would have been experienced during January, 1974.

5 Now, Mr. Mathis, if we have an increase in Class II
6 price for all Class II products for nine months of the year,
7 as you propose, do you think that the markets established for
8 Order 2, Class II disposition in product other than butter and
9 powder and cheddar cheese can be maintained?

10 Or do you share with me the fear that there will be
11 much more Class II milk that will have to be used in order to
12 clear the market in the manufacture of butter and powder?

13 A If I recall your questions, I think there are two.
14 First, the answer would be yes. The second, the answer would
15 be no.

16 Q You think the markets can be maintained, and that
17 there will not be more milk being put into butter and powder?
18 Is that your appraisal?

19 A I didn't say that. I think that what I said, you
20 asked me whether or not if the prices go up whether the markets
21 can be maintained, and to the extent, I would assume presume,
22 judging from the situation in my experience, I know of no
23 reason why the markets can't be maintained.

24 Q A large amount of milk from Order 2 Class II utili-
25 zation is presently being used in ice cream manufacture?

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1 A Yes.

2 Q A difference in price of milk of \$1.18 a hundred-
3 weight, and since there are approximately 12 pounds of total
4 solids in a hundred pounds of milk, means that the one market-
5 ing the milk would have to obtain a sufficient recovery in
6 the resale to return almost a full cent per pound of fat, and
7 per pound of solids not fat -- excuse me, almost ten cents per
8 pound of fat and per pound of solids, not fat, to recover the
9 \$1.18 additional cost.

10 Do you think that an ice cream manufacturer now
11 buying products made from Class I, Class II milk will pay to
12 a supplier of those products almost, and by almost I mean
13 more than nine and a half cents per pound of fat and nine and
14 a half per pound of solids non-fat to that supplier when this
15 cost price changes.

16 A I don't know. It depends on what other alternatives
17 he has.

18 Q There are many alternatives open to an ice cream
19 manufacturer. Changing the price class of milk does not lift
20 up the price of butter; is that correct?

21 A I am sorry. I didn't hear you.

22 Q Changing the Class II whole milk price in accordance
23 with your proposal does not raise up the market price of
24 butter?

25 A I don't know whether it will or not. It would

1 depend on what those higher prices -- what the raw product
2 does to the competitive structure of the market. It would
3 also depend on what decisions the Secretary makes, with respect
4 to imports and the prices at which these imports come in.

5 That is what would determine the market on butter,
6 the wholesale market.

7 Q You have given a long history of the prices paid in
8 Minnesota-Wisconsin and you have referred, in your own testi-
9 mony, to the level of butter prices.

10 A Over a long period of time, yes.

11 Q That's why I ask you if you don't expect continuation
12 of the history that you have referred to, in that there is no
13 direct connection, apparently, between the Minnesota-Wisconsin
14 price and the market price of butter and powder.

15 A I don't say that there is no relationship. There
16 is a relationship.

17 Q An alternative source of fat to an ice cream manu-
18 facturer is butter. It is because of that fact that I say
19 that I do not expect that the market will enjoy a continuation
20 of its present outlets, Order 2, Class II milk to ice cream
21 manufacturers, and I ask you if that is not a fair assumption
22 to make?

23 A I don't know, Mr. Miller, and I really wish if you
24 want to get these statements on the record that you do it
25 on direct. I don't mind being under cross-examination on my

1 statement and on the general situation.

2 JUDGE McALPIN: Gentlemen, I am going to uphold the
3 witness in that, and Mr. Miller, if you testify anymore you
4 will have to be ruled out of order and you will have to then
5 be sworn at a proper time to testify.

6 But we are not going to have testimony in guise of
7 questions by long assumptions preceding them. You may cross-
8 examine Dr. Mathis on his testimony, on his table. And you
9 can cross-examine him with reference to his expertise in this
10 field on issues that are particularly pertaining to this hear-
11 ing.

12 But we aren't going to belabor a lot of assumptions
13 that amount to testimony not under oath. If that is the only
14 way that you can ask those questions, then I am sorry but you
15 will have to come up here as a witness and be sworn.

16 BY MR. MILLER:

17 Q Mr. Mathis, I refer you to your Table No. 12. Unless
18 I missed it in some other table, do you have available an ex-
19 pression of the poundage of milk in the first column for New
20 York-New Jersey that is manufactured into butter and non-fat
21 dry milk for the period referred to?

22 A For '70-'72?

23 Q Yes.

24 A Yes, that is in the preceding --

25 Q Would you direct me to it, please?

1 A I thought I had put this data in by month, Mr.
2 Miller. I find that I did not. I put it in in totals, and
3 they appear in Table 11. However, the data is available that
4 I used from information published by the Market Administrator
5 in his quarterly bulletins.

6 Q Do you have any figures available that you can read to
7 me for a few months?

8 A I will see.

9 MR. MICALE: Your Honor, I am going to object again.
10 Mr. Mathis has presented his testimony. He has presented his
11 exhibits. He has explained the basis of his testimony and the
12 basis of his exhibits. If Mr. Miller wants to go beyond that,
13 to show additional facts, again he should appear on the stand,
14 under oath, and provide you and this hearing with those facts.

15 Mr. Mathis isn't, I don't believe, under any require-
16 ment to begin to give additional information other than what
17 he has given in his direct testimony statement.

18 JUDGE McALPIN: May I ask a question, Mr. Miller?
19 The purpose of your wanting the monthly figures with reference
20 to what appears here in annual figures is what?

21 MR. MILLER: I want to show Your Honor that Mr.
22 Mathis should be concerned in months other than April, May,
23 June as to how his farmers are going to get paid by the pro-
24 prietary handlers' marketing their milk.

25 I want to point out and I have the month ready here

EXCERPTS OF TRANSCRIPT OF PROMULGATION HEARING HELD ON
FEBRUARY 22, 25, 26, 1974 (pp. 284a-519a)

P R O C E E D I N G S

JUDGE McALPIN: Good morning, gentlemen. This is the third day of our hearing on the butter-powder snubber. When we recessed yesterday we were in the midst of cross-examination of Dr. Mathis.

I don't see him here just yet. But that is not a problem at the moment, because we have with us this morning an official from the Department of Agriculture of the state of Vermont. He was not here at the time that I called for any statements from state or municipal representatives.

He is here now and I would like to give him the opportunity, if he cares to, to make any statement, to do so at this time.

Whereupon,

EDSON E. GIFFORD, JR.

having been duly sworn by the Chief Administrative Law Judge, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

THE WITNESS: Thank you, Judge McAlpin. I appreciate your consideration this morning. My name is Edson E. Gifford, Jr., Deputy Commissioner, Vermont State Department of Agriculture, and a dairy farmer of 27 years in East Randolph, Vermont, with a milking herd of 65 dairy cows.

I appreciate this opportunity to present testimony

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1 before this Federal Order hearing. I am deeply concerned
2 with the economic plight of dairy farmers in Vermont and
3 throughout the Northeast.

4 Producers find themselves in a critical cost-price
5 squeeze, resulting in heavy culling of dairy herds or of many
6 producers going out of the dairy business. Because of this
7 activity we have experienced a 15-month decline in milk produc-
8 tion and this decline will continue unless immediate price in-
9 creases are forthcoming.

10 Dairy farming is an enterprise that requires farmers
11 to do advance planning. As a practical matter, current and
12 prospective profits in the dairy industry must be large enough
13 to encourage sufficient capital and manpower, producers, to
14 remain in the industry so productive capacity can be main-
15 tained.

16 Production plans for two and three years are now
17 being analyzed by farmers. The decisions of the United States
18 Department of Agriculture with respect to this hearing will
19 affect the adequacy of the milk supply in 1974 and 1975.

20 Vermont is a milk surplus state, using only 10 per-
21 cent of our total production within our borders. We are
22 presently supplying about 49 percent of the total amount of
23 milk in the Boston Federal Order No. 1 and 11 percent in the
24 Connecticut Order No. 15.

25 The facts clearly indicate that we are in a tight

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1 market with respect to milk supplies and actual shortages
2 could develop in the coming months unless there is a dramatic
3 upward adjustment of producer prices.

4 In the Boston Regional Marketing Area, receipts by
5 handlers of producer milk in January, 1971, totaled 264 million
6 pounds which is 4.8 percent or 13 million pounds less than a
7 year ago.

8 In August and September of 1973, there was an unpre-
9 cedented nine percent drop in receipts from producers for the
10 market. The number of dairy farmers supplying the Boston
11 Regional Order continued to drop with a total of 6,842 dairy
12 farmers in August of 1973, 425 less than in August, 1972, a
13 decline of 6.3 percent.

14 By December of 1973 this total had dropped to 6,741
15 producers. In March of 1972, there were 8,470 Vermont producers
16 supplying 144 million 865,000 pounds of milk to the Boston
17 Regional Market.

18 This, compared to 3,357 producers and 238 million
19 300,000 pounds in March of 1973 was a decrease of 6.5 percent.
20 In August of 1972, 3,420 Vermont producers shipped 143 million
21 763,000 pounds of milk to the Boston Regional Market compared
22 to 3,289 producers shipping 131 million 450,000 pounds in
23 August of 1973, a decrease of 3.5 percent.

24 In December of 1973, 3,328 Vermont producers
25 shipped 131 million 450,000 pounds of milk to the Boston

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1 Regional Market compared to 3,268 producers shipping 124 mil-
2 lion 267,000 pounds in December of 1973, a decrease of 6.2
3 percent. We are witnessing a significant decline in the
4 number of producers, a decrease in the average pounds per day
5 per producer and per animal unit.

6 This average dropped from 1,265 pounds in December
7 of 1972 to 1,235 in December of 1973. This indicates that
8 we are losing our larger producers and, in my opinion, it will
9 be most difficult, or next to impossible, to get these units
10 back into production.

11 A disastrous growing and harvest season commencing
12 in May of 1972 and further aggravated by adverse weather and
13 devastating floods in June and July of 1973 has left Vermont
14 dairy farmers very short of home grown feeds and roughage
15 supplies.

16 During the winter of 1972-73, 75 percent of the dairy
17 farmers participated in an Emergency Livestock Feed Program
18 under the U.S. Department of Agriculture. The flood of 1973
19 caused agricultural losses of \$15 million 506,000 dollars. The
20 entire state was declared a presidential disaster area.

21 Large quantities of feed and hay were destroyed. It
22 is estimated that our corn crop, most of which is used for
23 silage, was only 60 to 70 percent of normal. Farmers are
24 experiencing less production on the area feeding programs as
25 used in the past because of poor quality roughage.

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1 Dairy farmers have been forced into the commercial
2 grain markets for greater quantities than usual. Feed costs
3 which normally make up about 36 percent of total production
4 costs likely will comprise at least 48 percent of total costs
5 this year.

6 Costs of 16 percent dairy ration were priced at
7 \$146 dollars per ton on January 20 of this year, compared to
8 \$96 dollars per ton in 1973. This represents an increase of
9 50 percent in one year.

10 It should be noted that although the blended price
11 of milk increased \$2.06 over last year during the month of
12 January, it failed to match the significant rise in dairy
13 ration over the same period.

14 The result was that 100 pounds of 3.5 percent milk
15 in Zone 21 would buy 124 pounds of dairy ration this year,
16 compared to 151 pounds last year. We are experiencing a
17 decline in dairy cow numbers in Vermont as elsewhere in the
18 Northeast.

19 Several factors contribute to this. One, high cost
20 of feed. Two, higher beef prices. Three, Failure of the
21 price of milk to keep pace with the cost of production. Cull
22 dairy animals make up nearly 100 percent of the animals market-
23 ed as beef animals in Vermont.

24 In the past year, the percent of cull dairy animals
25 marketed has increased significantly. Beef handled by

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1 commission sales in Vermont for the period January 1, 1973
2 through December 31, 1973 increased 18.5 percent over the
3 January 1, 1971 through December 31, 1971 period. The number
4 of dairy animals going through commission sales increased by
5 23 percent for the same period.

6 It is extremely important to note that the number of
7 calves passing through these same sales increased by 18.2
8 percent. This trend must be reversed if we are to assure the
9 summer an adequate supply of milk in the future.

10 Other items necessary in production have also in-
11 creased in cost from January, 1973 to January, 1974. Electric
12 rates are up 26 percent. Telephone rates are up 20 percent.
13 Fertilizers are up 44 percent. Grass seeds are up 65 percent.
14 Regular gas is up 69 percent. Diesel fuel is up 116 percent.

15 Home heating oil is up 105 percent. Interest on
16 short-term loans is up 35 percent. Machinery replacement is
17 up 9.5 percent. And baler twine is up 107 percent. Production
18 costs in Vermont have been exceeding the increase in the price
19 of milk by two to five percent.

20 As an example, in January of this year, 3.5 percent
21 milk, Zone 21, Boston Regional, increased 29 percent over
22 January of 1973. For the same period, the Vermont cost of
23 dairy farming increased 33 percent.

24 We have today as in other areas of New England and
25 the Northeast, a dairy industry facing an uncertain future.

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1 We cannot let this trend continue. Too much production capa-
2 city has already been lost in Vermont and the Northeast. Price
3 improvement to dairy farmers is urgent. Unlike dairy depres-
4 sions of the past, farmers today have a choice.

5 With cattle, machinery, and the land in a seller's
6 market, they can cash up, adding to the already present de-
7 cline in production and in the long run creating shortages and
8 higher prices for the consumer.

9 Let me conclude by clearly indicating that, in my
10 opinion, the economic factors clearly indicate that an increase
11 in milk prices for the dairy farmer is essential if we are to
12 maintain an adequate supply of milk.

13 It is imperative that dairy farmers know what is
14 expected of them in future months. Remember, it takes 33
15 months from conception for an animal to become a producer in
16 the milking herd.

17 I strongly urge the hearing master and the review
18 committee to approve Proposal No. 4, which deletes all of
19 the words of Sections 1001.61(b) and 1015.61(b) except the
20 following: "The Class XX price shall be the basic formula
21 price for the month."

22 As an alternative, we would support Proposal No.
23 5 which is basically the same, except for the months of
24 April, May and June when the butter-powder formula would take
25 over.

